

The Honorable John H. Chun

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*

Defendants.

Case No. 2:23-cv-0932-JHC

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO
LIABILITY AGAINST ALL
DEFENDANTS**

**NOTE ON MOTION CALENDAR:
Tuesday, June 24, 2025**

TABLE OF CONTENTS

1		
2	INTRODUCTION	1
3	STATEMENT OF FACTS	2
4	I. PRIME “CHECKOUT” ENROLLMENT	2
5	A. Prime Enrollment Through the “Multi-Page Pipeline”	2
6	“SOSP” Prime Offer	3
7	“UPDP” Prime Enrollment Page	4
8	Single Page Checkout (“SPC”) Prime Offers	14
9	B. Prime Enrollment Through “TrueSPC”	16
10	C. Amazon Amassed Evidence of Unintentional Prime Enrollment, While the	
11	Individual Defendants Refused to Make Changes.....	18
12	1. Amazon Leadership Rebuffed 2017 Efforts by the Shopping Design	
13	and Content Testing Teams to Fix Nonconsensual Enrollment.....	18
14	2. Amazon Leadership Rejected 2018 Efforts by the Shopping Design	
15	and Content Testing Teams to Fix Nonconsensual Enrollment.....	19
16	3. Amazon Leadership Refused Proposals to Fix Nonconsensual	
17	Enrollment in 2019.	21
18	4. Amazon Launches and Again Quickly Reverses Clarity	
19	Improvements in Late 2020, All at Amazon Leadership’s Direction.	22
20	5. In Response to the FTC’s Investigation, Amazon Leaders Finally	
21	Approve, But Slow-Walk, Clarity Improvements.	25
22	D. Amazon’s Cancellation Survey Confirms Subscribers’ Nonconsensual	
23	Enrollment.....	28
	II. PRIME CANCELLATION	30
	A. Amazon Forced Consumers to Find an “End Membership” Button That	
	Did Not End Membership.....	31
	B. After Entering the Iliad, Consumers Must Request Cancellation Three	
	Additional Times.	34
	1. Marketing Page	34
	2. Offers Page.....	37
	3. Cancellation Page.....	38
	C. Amazon’s Two-Page Version of the Iliad Includes Many of the Same	
	Problems as the Three-Page Version.	39
	D. Amazon and Its Leadership Developed the Iliad to Stop Consumers from	
	Cancelling and Were Aware of the Confusion It Caused.	39

1	E.	Prime Subscribers Who Do Not Finish the Iliad Use Less Benefits Than They Did Before Attempting to Cancel.	42
2	F.	Amazon Redirects Consumers Who Attempt to Cancel by Phone to the Iliad. ...	44
3		LEGAL STANDARD.....	44
4		ARGUMENT.....	45
5	I.	PRIME IS SOLD WITH A “NEGATIVE OPTION FEATURE” AND IS THEREFORE COVERED BY ROSCA.....	45
6	II.	AMAZON FAILED TO CLEARLY AND CONSPICUOUSLY DISCLOSE PRIME’S MATERIAL TERMS (COUNT II).....	46
7	A.	A Facial Analysis of the Enrollment Processes Confirms Amazon’s Failure to Clearly and Conspicuously Disclose Prime’s Material Terms.	48
8	1.	The Context Within Which Amazon Displays Prime’s Material Terms Makes It Unlikely Consumers Will Notice Them.	48
9	2.	Even Ignoring Context, Amazon’s Disclosures of Prime’s Material Terms Are Not Clear and Conspicuous.	53
10	B.	Undisputed Empirical Evidence Confirms Prime’s Material Terms Are Not Clearly and Conspicuously Disclosed.	55
11	C.	Amazon Impermissibly Discloses Prime’s Terms and Conditions <i>After</i> Obtaining Billing Information.	55
12	III.	AMAZON FAILS TO OBTAIN CONSUMERS’ EXPRESS INFORMED CONSENT TO AUTOMATICALLY RENEWING PRIME SUBSCRIPTIONS (COUNTS I, III).....	56
13	A.	Amazon Does Not Obtain Consent to Prime’s Material Terms.	57
14	1.	Amazon Does Not Tell Consumers the Consequences of Clicking Its “Enrollment” Buttons.....	57
15	2.	Empirical Evidence Supports the Conclusion That Amazon Did Not Obtain Consumers’ Consent to Prime Enrollment.	60
16	B.	Amazon Does Not Obtain <i>Informed</i> Consent to Prime Enrollment.	61
17	IV.	AMAZON DID NOT PROVIDE SIMPLE PRIME CANCELLATION MECHANISMS (COUNT IV).	61
18	A.	Amazon’s Iliad Cancellation Flow Was Not Simple.	62
19	1.	Amazon Forced Consumers to Find an “End Membership” Button That Did Not End Membership.....	62
20	2.	After Entering the Iliad, Consumers Had to Request Cancellation Three Additional Times.	62
21	3.	The Iliad Provided Repetitive, Distracting Information and Options.	63
22	4.	Undisputed Empirical Evidence Supports a Finding That the Iliad Is Not	
23			

1	Simple.	64
2	B. Amazon’s Other Methods for Cancelling Prime Do Not Save Them from Liability.....	64
3	V. THE INDIVIDUAL DEFENDANTS ARE LIABLE FOR AMAZON’S ROSCA AND FTC ACT VIOLATIONS.	65
4	A. The Individual Defendants Are Liable for Prime’s Enrollment Practices.....	65
5	B. The Individual Defendants Are Liable for Prime’s Cancellation Practices.....	67
6	VI. DEFENDANTS’ EQUITABLE AND DUE PROCESS AFFIRMATIVE DEFENSES ALL FAIL.....	68
7	A. Defendants Cannot Support Their Equitable Defenses.	68
8	1. The FTC Engaged in No Misconduct.	69
9	2. Defendants Do Not Assert Constitutional Injury to Support Their Unclean Hands Defense.....	70
10	3. Defendants Do Not Identify Any Material “Affirmative Misrepresentation” to Support Equitable Estoppel.....	70
11	B. Defendants’ Due Process Defenses Fail As a Matter of Law.....	70
12	CONCLUSION.....	73

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	44
<i>Applebaum v. Lyft, Inc.</i> , 263 F. Supp. 3d 454 (S.D.N.Y. 2017)	58
<i>Baccei v. United States</i> , 632 F.3d 1140 (9th Cir. 2011).	70
<i>Barrer v. Chase Bank USA, N.A.</i> , 566 F.3d 883 (9th Cir. 2009)	46, 48
<i>Berman v. Freedom Fin. Network, LLC</i> , 30 F.4th 849 (9th Cir. 2022)	53, 54, 57
<i>Celotex Corp. v. Catlett</i> , 477 U.S. 317 (1986).....	44
<i>Chabolla v. ClassPass Inc.</i> , 2023 WL 4544598 (N.D. Cal. June 22, 2023).....	48, 59
<i>Cullinane v. Uber Techs., Inc.</i> , 893 F.3d 53 (1st Cir. 2018).....	54, 57
<i>Dumont v. Reily Foods Co.</i> , 934 F.3d 35 (1st Cir. 2019)	46
<i>Elias v. Hewlett-Packard Co.</i> , 903 F. Supp. 2d 843 (N.D. Cal. 2012)	47
<i>Far Out Prods., Inc. v. Oskar</i> , 247 F.3d 986 (9th Cir. 2001)	44
<i>FTC v. Am. Fin. Benefits Ctr.</i> , 2018 WL 11354861 (N.D. Cal. Nov. 29, 2018)	52
<i>FTC v. Amazon.com, Inc.</i> , 71 F. Supp. 3d 1158 (W.D. Wash. 2014).....	56
<i>FTC v. Commerce Planet, Inc.</i> , 815 F.3d 593 (9th Cir. 2016)	65
<i>FTC v. Cyberspace.com LLC</i> , 453 F.3d 1196 (9th Cir. 2006).....	48, 53
<i>FTC v. Doxo, Inc.</i> , --- F. Supp. 3d ----, 2025 WL 887311 (W.D. Wash. Mar. 21, 2025).....	46
<i>FTC v. Green Eq. Sols.</i> , 2023 WL 7107273 (C.D. Cal. Sept. 29, 2023)	69, 70
<i>FTC v. Health Formulas, LLC</i> , 2015 WL 2130504 (D. Nev. May 6, 2015)	61
<i>FTC v. Loewen</i> , 2013 WL 5816420 (W.D. Wash. Oct., 29, 2013).....	65
<i>FTC v. World Media Brokers Inc.</i> , 2004 WL 432475 (N.D. Ill. Mar. 2, 2004).....	65
<i>In re Ring LLC Privacy Litig.</i> , 2021 WL 2621197 (C.D. Cal June 24, 2021).....	58
<i>Kahn v. Walmart Inc.</i> , 107 F.4th 585 (7th Cir. 2024).....	47
<i>Keebaugh v. Warner Bros. Ent. Inc.</i> , 2022 WL 7610032 (C.D. Cal. Oct. 13, 2022)	48
<i>Lee v. Intelius, Inc.</i> , 737 F.3d 1254 (9th Cir. 2013).....	58

1	<i>Lopez v. Dave Inc.</i> , 2022 WL 17089824 (N.D. Cal. Nov. 21, 2022).....	53, 58
2	<i>Marsh v. Zaazoom Sols., LLC</i> , 2012 WL 952226 (N.D. Cal. Mar. 20, 2012).....	61
3	<i>McCollough v. Johnson, Rodenberg & Lauinger</i> , 587 F. Supp. 2d 1170 (D. Mont. 2008)	68
4	<i>Metro. Group Prop. & Cas. Ins. Co. v. Fite</i> , 738 F. Supp. 3d 1371 (W.D. Wash. 2024)	44, 68
5	<i>Narambatal v. DHS</i> , --- F. Supp. 3d ----, 2025 WL 754530 (W.D. Wash. Mar. 10, 2025).....	44
6	<i>Nguyen v. Barnes & Noble Inc.</i> , 763 F.3d 1171 (9th Cir. 2014)	49, 53, 57
7	<i>Oberstein v. Live Nation Entm't, Inc.</i> , 60 F.4th 505 (9th Cir. 2023).....	49, 51, 52
8	<i>Rubio v. Capital One Bank</i> , 613 F.3d 1195 (9th Cir. 2010)	47, 55
9	<i>Sadlock v. Walt Disney Co.</i> , 2023 WL 4869245 (N.D. Cal. July 31, 2023).....	51
10	<i>SEC v. Sands</i> , 902 F. Supp. 1149 (C.D. Cal. 1995).....	69
11	<i>Sellers v. JustAnswer LLC</i> , 289 Cal. Rptr. 3d 1 (Cal. Ct. App. 2021).....	48, 49, 53
12	<i>United States v. DeBorba</i> , 713 F. Supp. 3d 1042 (W.D. Wash. 2024).....	71
13	<i>United States v. Mitchell</i> , 652 F.3d 387 (3d Cir. 2011)	71
14	<i>United States v. MyLife.com, Inc.</i> , 499 F. Supp. 3d 757 (C.D. Cal. 2020)	46, 62, 63
15	<i>United States v. Ruby Co.</i> , 588 F.2d 697 (9th Cir. 1978)	68, 70
16	<i>Walker v. Fred Meyer, Inc.</i> , 953 F.3d 1082 (9th Cir. 2020)	46, 47
17	<i>Watkins v. U.S. Army</i> , 875 F.2d 699 (9th Cir. 1989)	68
18	<i>Wilson v. Huuuge, Inc.</i> , 944 F.3d 1212 (9th Cir. 2019).....	54
19	Statutes	
20	15 U.S.C. § 45(a)(1).....	56
21	15 U.S.C. § 57a(a)(1)(B).....	72
22	15 U.S.C. § 8403	45
23	15 U.S.C. § 8403(1)	46, 55, 56
	15 U.S.C. § 8403(2)	56, 61
	15 U.S.C. § 8403(3)	61

Rules

Fed R. Civ. P. 56(a) 44

Regulations

16 C.F.R. § 310.2(w) 45

Other Authorities

Dictionary.com, <https://www.dictionary.com/browse/simple> 61

Order Denying Motion to Dismiss, *United States v. Adobe, Inc., et al.*, No. 24-cv-3630,
Dkt. No. 84 (N.D. Cal. May 2, 2025) 46

Speech of Hon. Zachary T. Space of Ohio, 156 Cong. Rec. E2165-02 (Dec. 15, 2010)..... 61

INTRODUCTION

For years, Amazon has knowingly enrolled millions of shoppers in automatically renewing Prime subscriptions without their knowledge or consent. Specifically, Amazon places Prime enrollment buttons within the product-checkout flow, and then labels those enrollment buttons things like “Get FREE Two-Day Shipping” or “Place your order.” Employees across several Amazon and Prime teams tried to fix this problem—described by one as an “unspoken cancer” (Att.¹ 37 at 4)—only to be rebuffed by Amazon executives, including Individual Defendants Jamil Ghani, Neil Lindsay, and Russell Grandinetti, who repeatedly were unwilling to accept the sign-up drops that accompanied efforts to ensure shoppers did not accidentally enroll. Defendants compounded the enrollment scheme by needlessly and unlawfully complicating Prime cancellation through the aptly named “Iliad” process, which, among other problems, forced consumers to click “End Membership” buttons that did not end membership and confirm their desire to cancel four times before Amazon agreed to stop billing them.

This case is appropriate for partial summary judgment because there is no genuine dispute of material fact regarding the manner in which Amazon enrolled consumers in Prime or the steps required to cancel. In fact, at the time it denied Defendants’ motions to dismiss, the Court reviewed those same undisputed enrollment practices and found the disclosure of Prime’s material terms on the challenged “UPDP” enrollment page “on their face were not clear and conspicuous,” which also meant that Amazon “did not receive consumers’ ‘express informed consent’ to enroll in Prime.” Dkt. #165 at 18 n.4, 27. Furthermore, the Court held that the Prime “cancellation methods, as alleged, violate ROSCA.” *Id.* at 31 n.7. At the time, the Court could only consider matters alleged in the FTC’s Amended Complaint. Since then the evidence—and the resulting undisputed facts—has only gotten stronger. The FTC therefore respectfully moves for summary judgment as to liability against all Defendants.

¹ All “Attachment” cites reference attachments to the Declaration of Evan Mendelson, filed concurrently herewith. All page number cites for Attachments and docket entries refer to the ECF header information at the top of the page.

STATEMENT OF FACTS

I. PRIME “CHECKOUT” ENROLLMENT

A shopper attempting to buy a product from Amazon typically encounters several Prime upsell offers during the product-checkout process. Prior to October 2022, Amazon referred to that checkout process, and the Prime offers contained therein, as the Multi-Page Pipeline (“MPP”). In October 2022, Amazon modified the checkout process, launching “TrueSPC” to replace the MPP. As described below, there is no genuine dispute of material fact as to the workings of both checkout processes and the Prime enrollment pages contained therein.

A. Prime Enrollment Through the “Multi-Page Pipeline”

Prior to entering the MPP, an Amazon shopper looking to purchase a product clicked an orange “Add to Cart” button on the product’s “detail page” and then an orange “Proceed to checkout” button on the page that immediately followed. *See, e.g.*, Att. 4 at 7-8. Some shoppers next saw a “Choose a billing address” page, on which they again had to click an orange button to proceed with their product purchase. *Id.* at 9. From here, Amazon made at least three Prime offers to certain consumers proceeding through the MPP, as pictured in Figure 1. Att. 67 at 28.

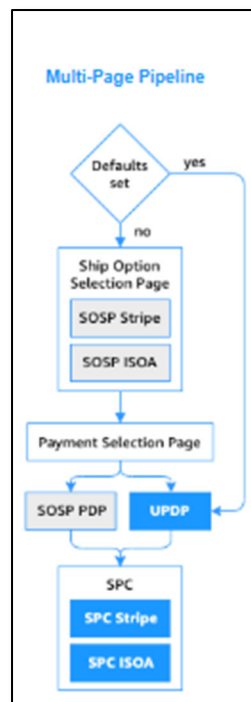


Figure 1: MPP Flow Chart (Att. 68 at 28)

Those offers were contained in the (1) “Ship Option Selection Page” (“SOSP”); (2) “Universal Prime Decision Page” (“UPDP”) or “SOSP Prime Decision Page” (“SOSP PDP”); and (3) “Single Page Checkout” page (“SPC”).

1. “SOSP” Prime Offer

At the start of the MPP, some consumers with saved “defaults”—*i.e.*, saved billing and address information—and all customers without saved defaults saw the Ship Option Select Page, an example of which is pictured in Figure 2. *See* Att. 2 at 15 (customer with defaults might see SOSP), 27 (all customers without defaults see SOSP).

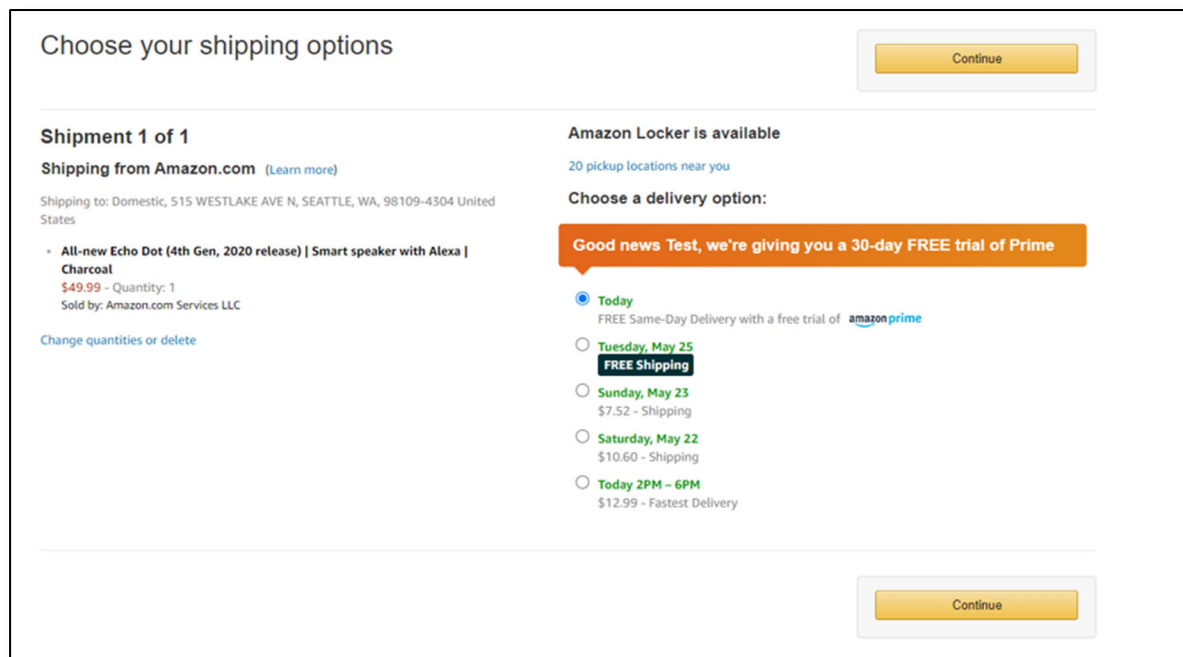


Figure 2: SOSP (Att. 4 at 10)

On this page, Amazon told consumers they were receiving a “30-day FREE trial of Prime” and then offered them a series of shipping options, the first of which, labeled “Today,” promised them free, same-day (or otherwise-accelerated) shipping with their free trial of Prime. Att. 4 at 10. The SOSP page did not disclose Prime’s price or that fact that memberships auto-renew for a monthly fee. *Id.* Nor did it disclose that the Prime free trial had not been “given” to the shopper, but was instead an offer they could accept or reject. *Id.*

Consumers who select the “Prime” shipping option on SOSP were not immediately enrolled in Prime. *Id.* at 16-17. Rather, regardless of which shipping option they choose, consumers clicked the orange SOSP “Continue” button and arrived at the “Payment Selection Page” (Figure 3). *Id.* This was the page on which Amazon obtained consumers’ billing information. It is also yet another page on which consumers clicked an orange button to proceed with their product purchase:

The screenshot displays the 'Select a payment method' page on Amazon. At the top, there is a promotional banner for a \$50 off discount. Below this, the 'Your credit and debit cards' section shows a Mastercard ending in 2871 with the name 'Test Test' and an expiration date of 10/2025. To the right of this section is a yellow 'Continue' button with the text 'You can review this order before it's final.' Below the credit/debit cards section, there are several other payment options: 'More payment options' (with a link to 'Add a credit or debit card'), 'Pay with cash at a location near you' (with a link to 'Set up Amazon PayCode'), 'Gift Cards, Vouchers & Promotional Codes' (with a link to 'Enter a gift card, voucher or promotional code'), 'Amazon.com Store Card' (with a link to 'Learn more'), and 'Personal Checking Accounts' (with a link to 'Add a personal checking account'). At the bottom right, there is another yellow 'Continue' button with the same text as the one above it.

Figure 3: Payment Selection Page (Att. 4 at 18)

2. “UPDP” Prime Enrollment Page

The next page of the MPP was the UPDP, which remains in use today. After clicking the “Continue” button on the Payment Selection Page, shoppers next saw either the “UPDP” or related “SOSP PDP” Prime enrollment page. Specifically, shoppers who selected one of the non-Prime shipping options on SOSP saw the UPDP. Att. 2 at 16-18; *supra* Figure 1. Shoppers who selected the Prime shipping option on SOSP were instead shown what is called the SOSP

PDP. *Id.* SOSP PDP was simply a variant of UPDP, and is discussed at the end of this section.

Amazon has used several different versions of its UPDP page, an example of which, from May 2021, is Figure 4. *See* Att. 4 at 19.² The UPDP page has varied slightly over time, and the version a consumer sees depends on, among other things, whether they are using a mobile or desktop device, whether they have a Prime-shipping-eligible item in their cart, and whether they are eligible for a Prime free trial (as opposed to only a paying membership). Att. 2 at 30-33.

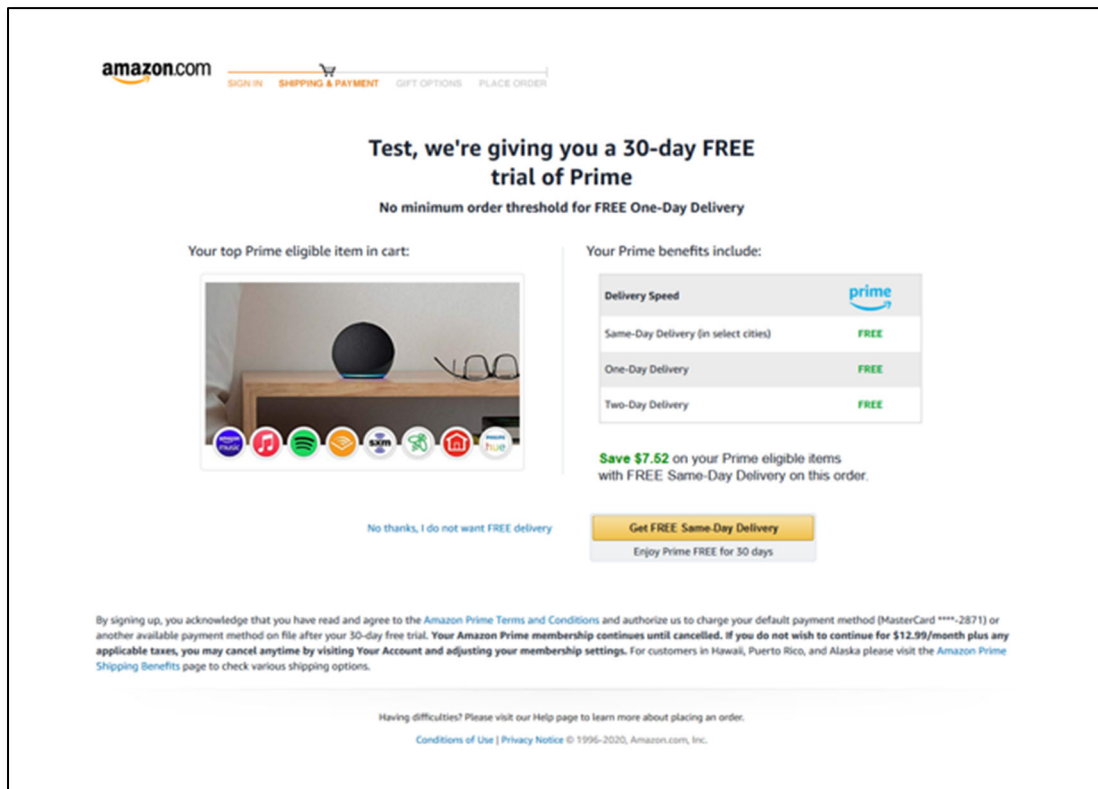


Figure 4: UPDP (May 2021) (Att. 4 at 19)

Despite these variations, it is undisputed that all versions of the UPDP share certain features. *First*, to proceed past the UPDP and complete their product purchase, consumers must either click the “positive CTA”³ (a button that enrolls them in Prime) or the “negative CTA” (a

² Unless otherwise noted, all images of Prime enrollment pages in this Motion were identified by Amazon as “representative images” as of particular points in time. *See* Att. 2 at 32-39.

³ In online user-experience design, CTA stands for “call to action.”

link or button that declines the Prime offer). Att. 132 at 100:11-16, 105:17-22, 119:7-11. In the example above, the “positive CTA” is the button reading “Get FREE Same-Day Delivery,” and the “negative CTA” is the button reading “No thanks, I do not want FREE delivery.” *Second*, the UPDP enrollment button is the same color and style as the orange buttons previously clicked by shoppers to continue with their product purchases. Att. 4 at 15-18. *Third*, clicking the orange button immediately enrolls the consumer in Prime without, for example, a confirmation popup window. Att. 2 at 11-12. *Fourth*, even if the consumer does not complete their product purchase after clicking the enrollment button, and therefore does not need or receive the “same-day delivery” they elected, Amazon *still* enrolls them in Prime. *See, e.g.*, Att. 132 at 88:17-89:21, 103:8-18. *Fifth*, Amazon does not display Prime’s price, the fact that there is a price, or the fact that the price auto-renews⁴ every month to shoppers prior to their arrival at the UPDP page. Att. 2 at 14-19. *Sixth*, Amazon bills consumers for the Prime membership (either immediately or after a free-trial period) using the payment method previously provided on the “Payment Selection Page” or the shopper’s “default” payment method provided in a prior visit to Amazon.com. Att. 2 at 12; Att. 132 at 114:22-115:22; *see infra* pp. 55-56 (explaining that this timing itself is illegal).

UPDP enrollment pages have appeared in various iterations described below.

a. Free Trial Desktop UPDP – Pre-March 2020

Prior to the March 2020 onset of the COVID pandemic, Amazon maintained several versions of the desktop UPDP, each of which was substantially similar to the May 2021 example included above. *See, e.g.*, Att. 6; Att. 7; Att. 8 at 15.⁵ In all of these versions, Prime’s price and the fact that it auto-renews were only disclosed in fine-print terms and conditions at the bottom of the page. Moreover, the enrollment button read “Get FREE Two-Day [or One-Day or Same-

⁴ Throughout this Motion, the FTC uses “auto-renew” to refer both to the fact that a free trial converts to a paying membership after 30 days and to the fact that the membership automatically renews every 30 days thereafter until the consumer cancels.

⁵ Amazon did not identify Attachment 8 as containing “representative images.”

Day] Delivery.”

b. Free Trial Mobile UPDP – Pre-March 2020

Pre-March 2020 mobile UPDP enrollment pages, such as in Figure 5 below, were similar to desktop versions. Clicking “Get FREE Two-Day Shipping” enrolled the consumer in Prime, while Prime’s price and auto-renewal were only disclosed in the fine-print terms and conditions.

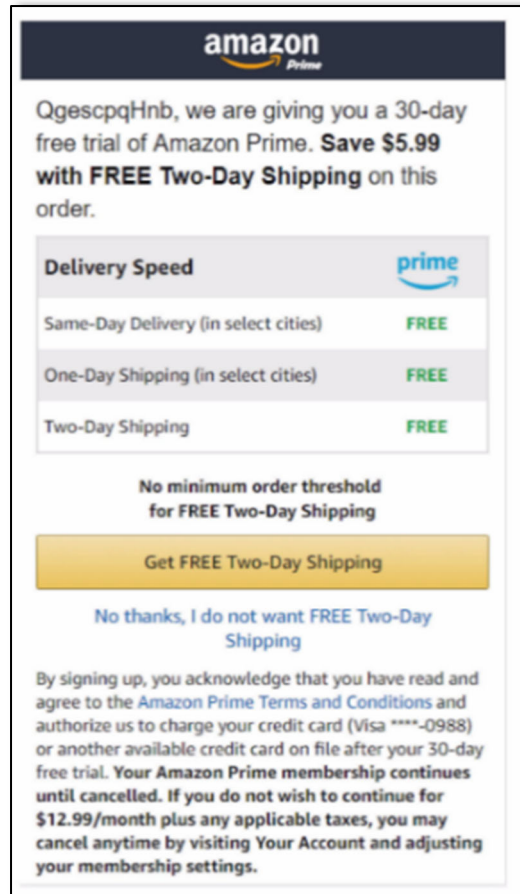


Figure 5: Mobile UPDP (May 2019) (Att. 9)

c. Free Trial UPDP – “Order Agnostic”/March 2020-September 2020

For six months in the middle of 2020, in response to the COVID pandemic and related shipping delays, Amazon stopped using UPDP pages focused on shipping speeds (Att. 36 at 3 (lines 67-69)), instead pivoting to “order agnostic” UPDP pages highlighting Prime’s other

benefits, such as Prime Video. *See, e.g.*, Att. 11 at 8-10.⁶ Outside of March-September 2020, Amazon also has used these “order agnostic” pages when a consumer does not have a Prime-shipping-eligible item in their cart. *See id.* On these pages, the enrollment button generally read “Start my 30-day FREE trial,” as in the July 2020 example below. Att. 10. In this example, Amazon disclosed Prime’s price outside of the fine print (“After your FREE trial, Prime is just \$12.99/month”), but in relatively inconspicuous text compared to the page header and marketing material. Amazon still only displayed the fact that Prime auto-renews in fine print.⁷

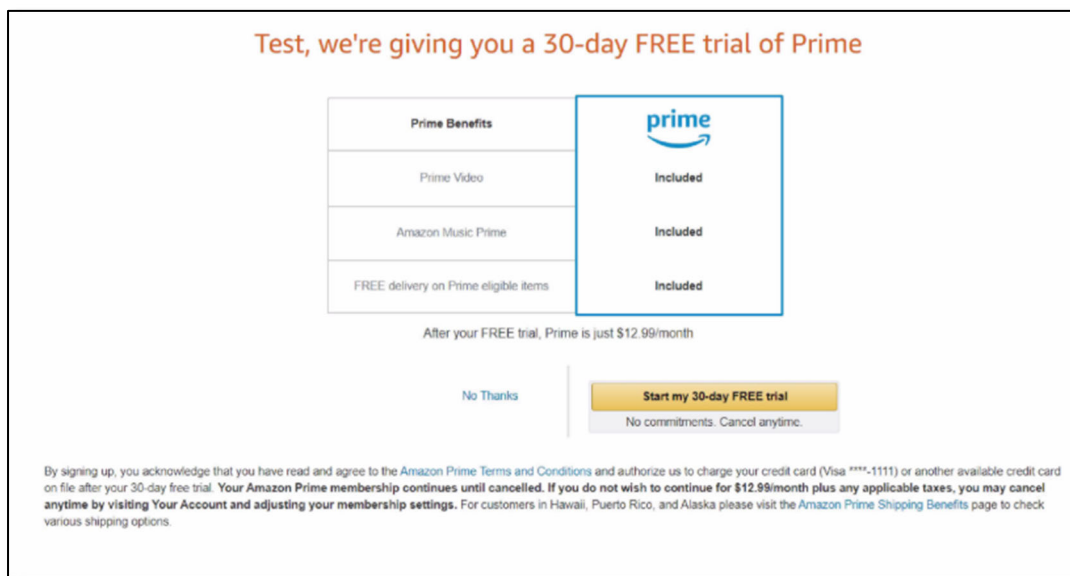


Figure 6: “Order Agnostic” UPDP (July 2020) (Att. 10)

d. “Free Trial” UPDP – September 17, 2020 – December 3, 2020 Clarity Improvements

In mid-September 2020, Amazon reverted to making shipping-based upsells, rather than “order agnostic” upsells. At that same time, however, as described in greater detail *infra* pp. 22-

⁶ Amazon did not identify Attachment 11 as containing “representative images.” It is a December 2021 slide deck describing “Prime UPDP CX [Customer Experience] Updates.”

⁷ Amazon has argued that the language stating that Prime is \$12.99 per month “[a]fter your FREE trial” is a disclosure not only of price, but also auto-renewal. That is simply not true, as Amazon’s own internal policies recognize. *See, e.g.*, Att. 3 at 2 (describing the “After your free trial” language as a price disclosure; by contrast, statement that Prime “continue[s] until cancelled” is auto-renewal disclosure). In any event, the proper characterization of this language is immaterial to the resolution of this Motion.

25, Amazon decided to implement certain short-lived clarity improvements, reflected in Figure 7 below (Att. 8 at 14). Among other improvements, Amazon changed the enrollment button to read “Start your Prime FREE trial” (rather than “Get FREE Two-Day Shipping”), converted the “No Thanks” decline link to a decline button, and removed the language after “No Thanks” that declared a customer who declines Prime does not want “fast, free shipping.” See Figure 4; Figure 7. Defendants now disclosed Prime’s price in a subheader at the top of the page, far from the enrollment button.

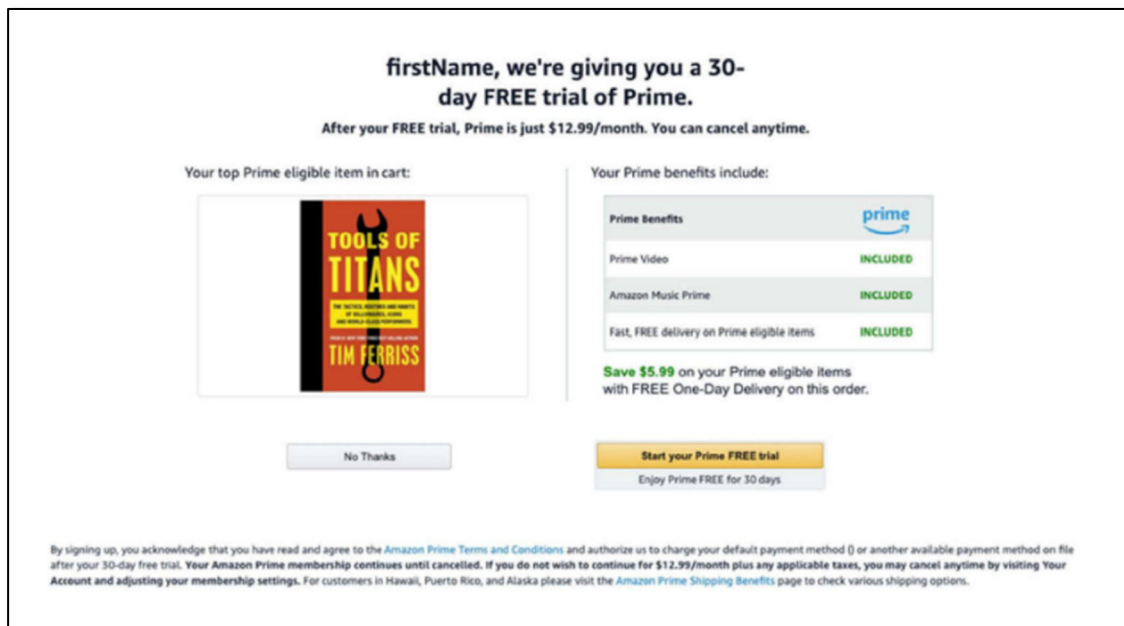


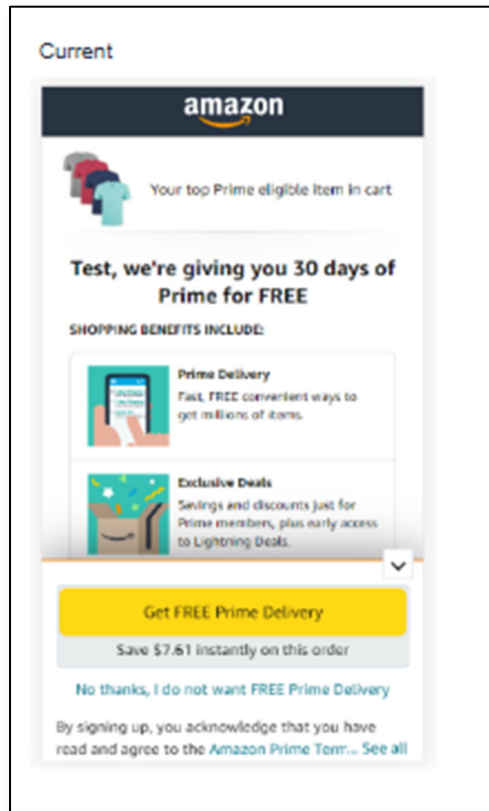
Figure 7: UPDP (September 2020 Clarity Improvements) (Att. 8 at 14)

e. Free Trial UPDP – December 2020 – January 2022

The above-described UPDP clarity improvements did not last long. See *infra* pp. 22-25. In December 2020, Amazon reverted to UPDP pages similar to Figure 4 (Att. 4 at 19), with a “Get FREE Two-Day Shipping” enrollment button and a decline link that requires the consumer to click that they do not want “fast, free shipping.” Figure 8 below shows an example mobile UPDP from this time period. Att. 11 at 12. Here again, the “Get FREE Prime Delivery” button immediately enrolled the consumer in Prime. On this page, moreover, Prime’s price and auto-renewal were not displayed at all, unless the consumer clicked “See all” in the bottom right or

1 scrolled all the way down the page. *See* Att. 132 at 106:14-108:16 (confirming these facts for
 2 the identical Attachment 54 at 40).

3 Therefore, a consumer could enroll in Prime without Prime’s price or the fact that it auto-
 4 renews even appearing on the screen. As always, the consumer also would be enrolled if they



16 *Figure 8: Mobile UPDP (December 2021) (Att. 11 at 12)*

17 clicked “Get FREE Prime Delivery” and then never even finished purchasing the product being
 18 “delivered.”

19 **f. Free Trial UPDP – February 2022-present**

20 As described *infra* pp. 25-28, Amazon, in February 2022, made certain changes to the
 21 UPDP in response to the FTC’s investigation. This round of changes stopped well short of the
 22 temporary September 2020 improvements (Figure 7). For example, Amazon, rather than change
 23 the enrollment button to read “Start Your 30-Day Free Trial,” simply added “with Prime” to the

end of “Get FREE One-Day Delivery,” as pictured in Figures 9 and 10 below. Att. 67 at 16, 23.⁸ Amazon also added price information outside of the fine print, but, on desktop, included it within marketing text above the enrollment button.

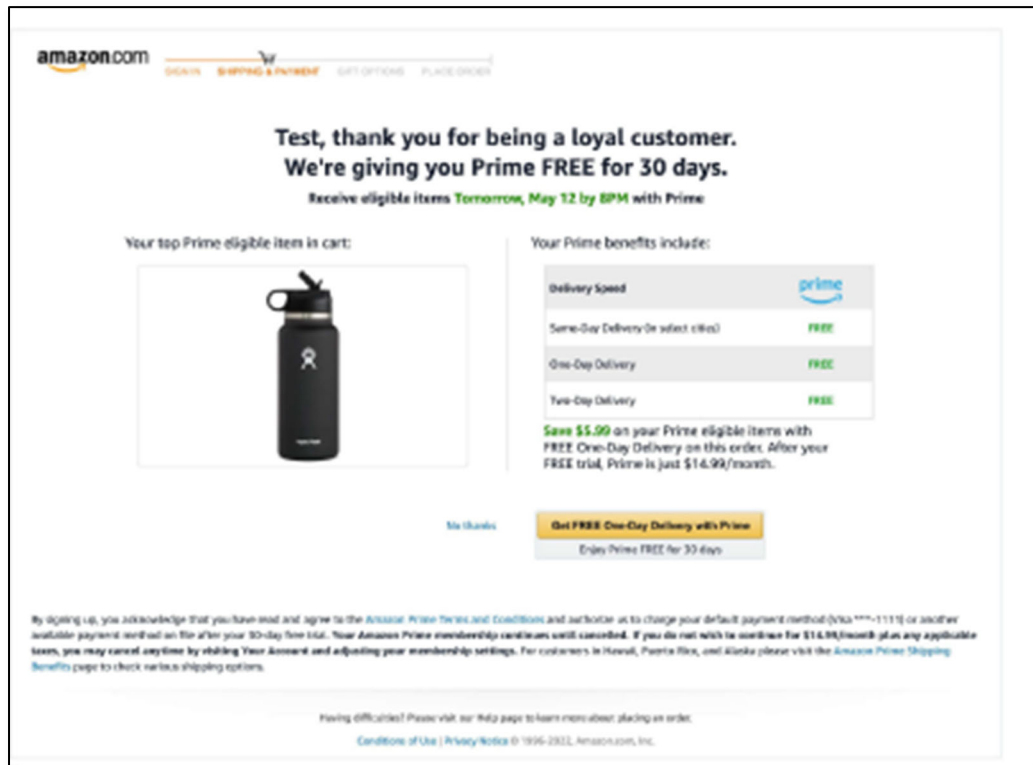


Figure 9: UPDP (May 2022) (Att. 67 at 23)

On mobile, the price information is in an inconspicuous subheader far from the enrollment button. Auto-renewal information—*i.e.*, that Prime “continues until cancelled”—is not available at all on mobile without clicking “see all” or scrolling down the page:

⁸ Amazon did not identify Attachment 67 as containing “representative images.” The images are from a May 2022 presentation to Amazon executives regarding Prime enrollment.

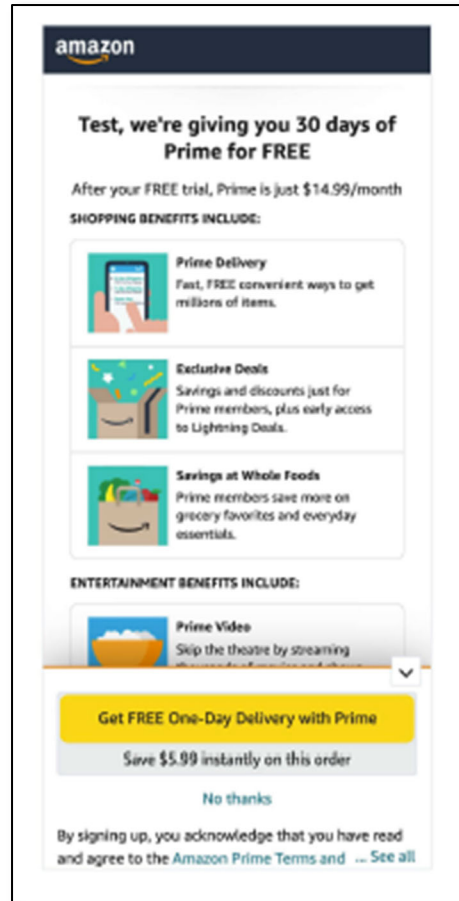


Figure 10: Mobile UPDP (May 2022) (Att. 67 at 16)

g. “Hard Offer” UPDP

Not all Amazon shoppers are eligible for Prime free trials. Those who are ineligible instead generally receive what Amazon refers to as a Prime “hard offer,” meaning they are immediately charged for their first membership month.⁹ Figure 11 below shows a May 2021 “hard offer” UPDP. Att. 12 at 19. Here, clicking the button reading “Get FREE Delivery with Prime” results in an *immediate* charge of \$12.99 (plus taxes), which is only disclosed in the list of Prime “benefits.”

⁹ Rather than a “hard offer,” some Amazon shoppers receive a “paid trial,” typically offering them a week of Prime for \$1.99 before it converts to an automatically renewing monthly membership. *See, e.g.* Att. 54 at 35.

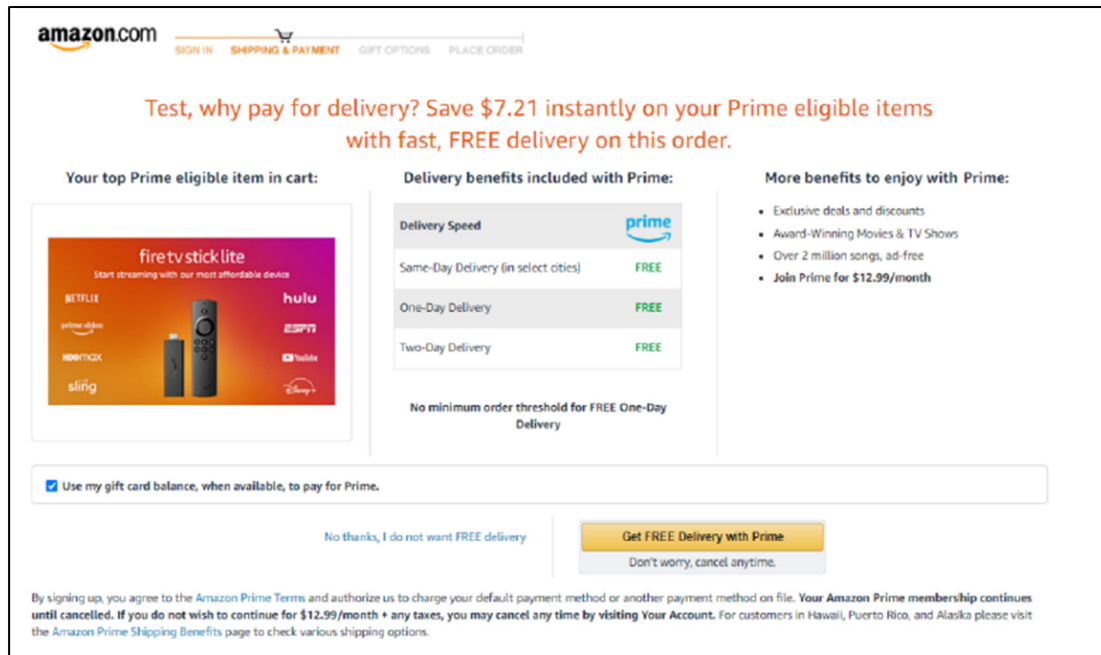


Figure 11: "Hard Offer" UPDP (Att. 12 at 19)

In other words, despite not having an "Order Total," billing information section, or anything else generally present on an e-commerce checkout page, Amazon treats this as a checkout screen for a Prime membership.¹⁰ A consumer who clicks "Get FREE Delivery with Prime" in order to "save \$7.21 instantly" with "fast, FREE delivery" is instead instantly *charged* \$12.99 and enrolled in an automatically renewing Prime subscription. The only alternative to completing the Product purchase without being immediately charged \$12.99 is to click "No thanks, I do not want FREE delivery." Confusingly, consumers forced to click that they "do not want FREE delivery" remain eligible for, and in fact were previously promised, free delivery—in the form of "core" free shipping rather than "Prime" free shipping. *See infra* p. 51; Att. 132 at 105:7-106:4.

¹⁰ The mobile version of the UPDP "hard offer" page has many of the same problems. *See* Att. 12 at 41.

h. SOSP PDP – Desktop and Mobile

As described above, a shopper who selects the “Prime” shipping option on the Ship Option Select Page proceeds to the SOSP PDP variant of UPDP. This page, pictured below (Att. 4 at 12), functions in the same manner as UPDP, with the orange button immediately enrolling consumers in Prime.

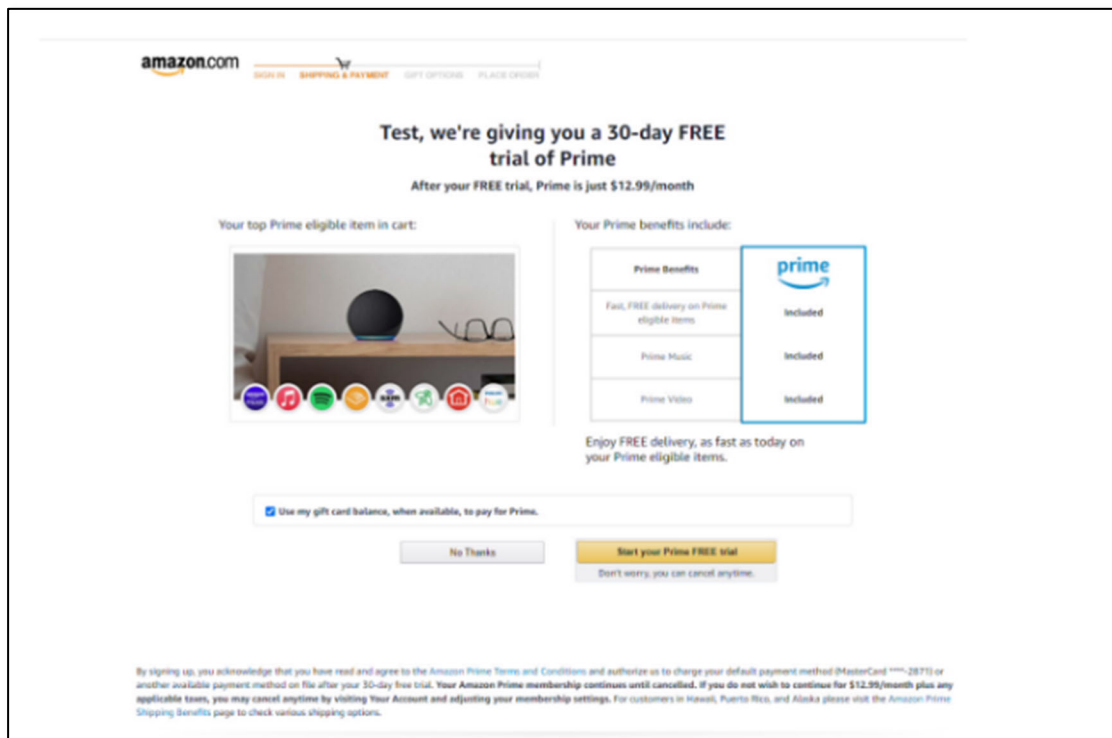


Figure 12: SOSP PDP (Att. 4 at 12)

3. Single Page Checkout (“SPC”) Prime Offers

Regardless of whether a consumer enrolled in Prime on the UPDP or SOSP PDP page, they next arrived at the SPC checkout page, which allowed them to complete their product purchase. If the consumer had not yet enrolled in Prime, Amazon made at least two Prime offers on the SPC page: the blue rectangular box below in the Figure 13 below (called the “SPC Stripe”) and the first “delivery option” toward the bottom of the image, labeled “Today” (called the “SPC ISOA [In-line Shop Option Ad]”). Att. 4 at 26. Amazon pre-populated the payment

information at the top of the page with the information previously provided, either on the MPP's Payment Selection Page, *see supra*, or on a prior visit to Amazon.com.

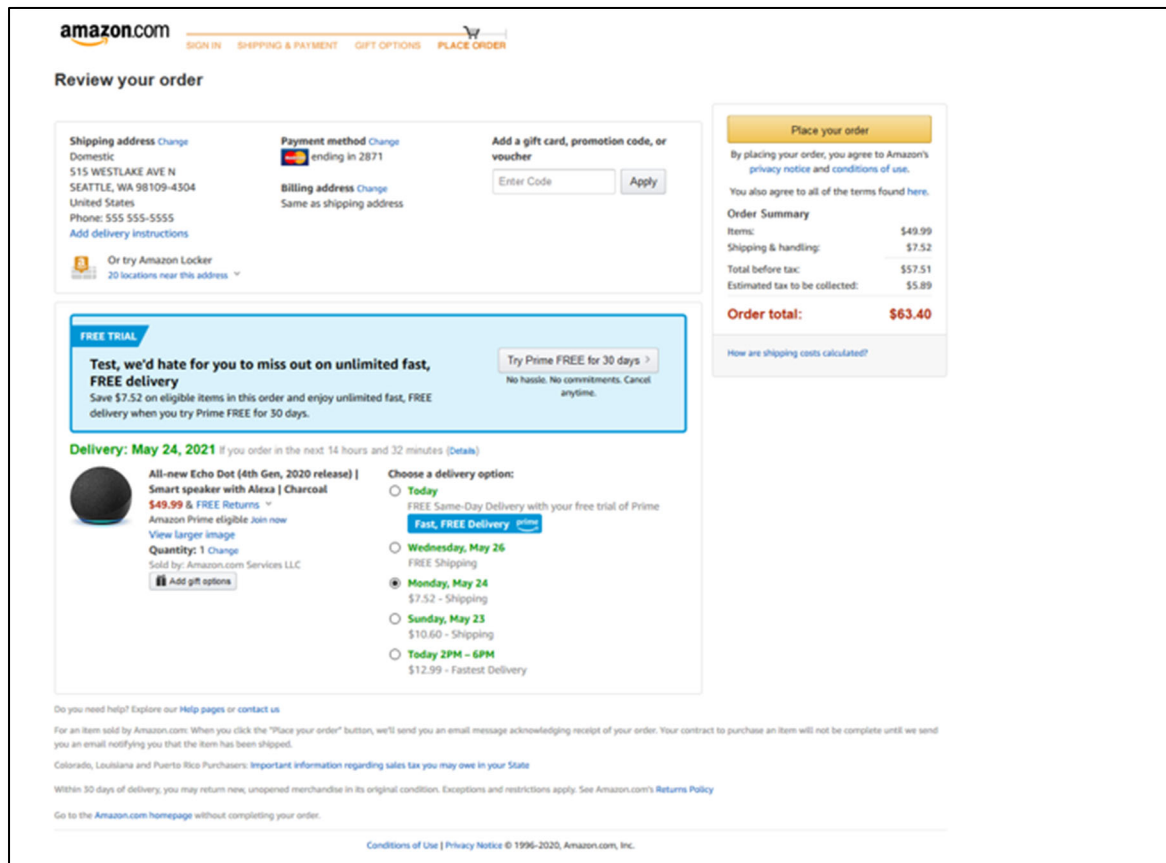


Figure 13: SPC Before Clicking "Try Prime FREE" (Att. 4 at 26)

At the moment the consumer clicked either the "Try Prime FREE" button in the SPC Stripe or the "Today" button in the SPC ISOA, Amazon did not display Prime's price or the fact that it auto-renewed. Rather, that information appears only *after* the consumer clicked either button, as pictured in Figure 14. Att. 4 at 27.¹¹ Specifically, Amazon added the price and auto-renewal information in bolded fine-print in the third paragraph beneath the "Place your order" button. Amazon placed this information in the subheader underneath the larger blue text advertising the "FREE trial of Amazon Prime" on the left side of the page.

¹¹ The mobile version of the SPC free trial Prime offer is at Attachment 4 at 42.

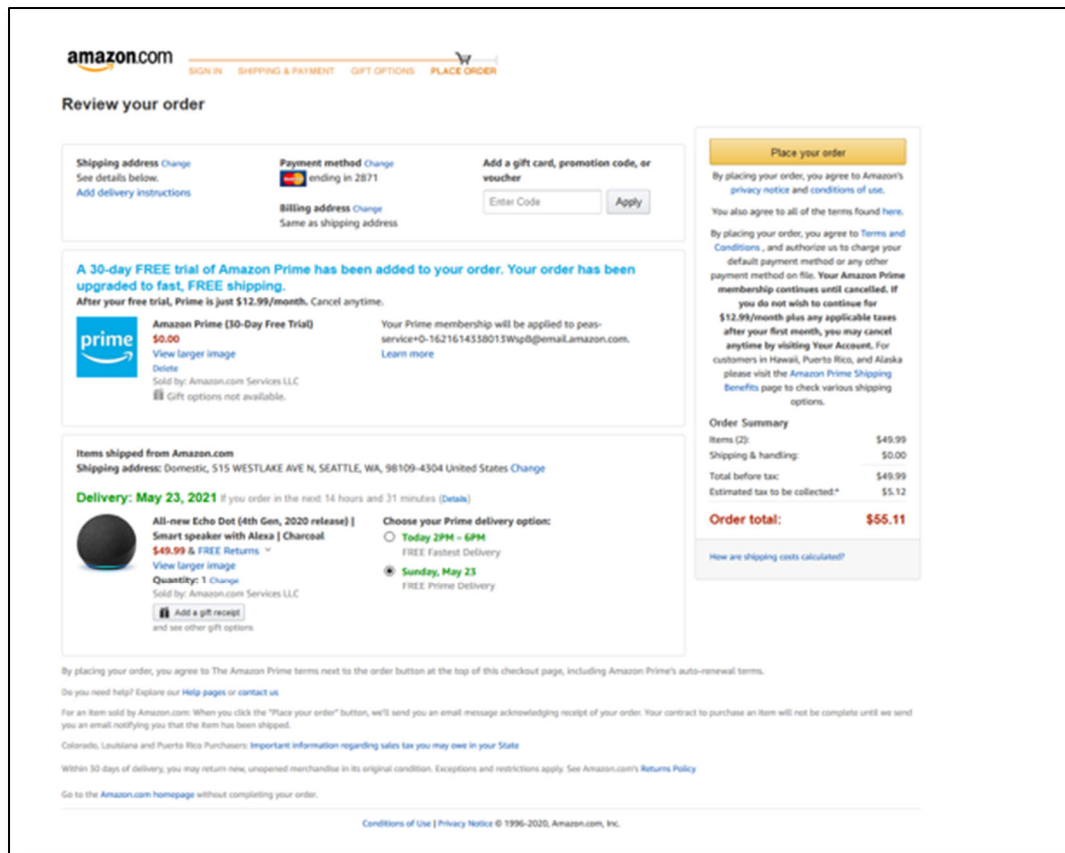


Figure 14: SPC After Clicking "Try Prime Free" (Att. 4 at 27)

On this screen, the orange “Place your order” button both completed the consumer’s product purchase and enrolled them in Prime. To “Place your order” without enrolling in Prime, the consumer had to locate and click the small “Delete” link next to the Prime logo in the middle of the page.¹² Att. 132 at 121:19-24.

B. Prime Enrollment Through “TrueSPC”

In or around October 2022, Amazon shifted from the Multi-Page Pipeline to what it calls “TrueSPC.” The difference between the two is pictured in the Figure 15 (Att. 67 at 28):

¹² On the “hard offer” version of SPC—for shoppers ineligible for free trials—consumers who click to try Prime see a pop-up window. Att. 12 at 27-28, 42. They then either click a “No Thanks” button to decline Prime or a “Join Prime for Fast, FREE Delivery” button, in which they are immediately enrolled in Prime and charged \$12.99 plus taxes. *Id.*

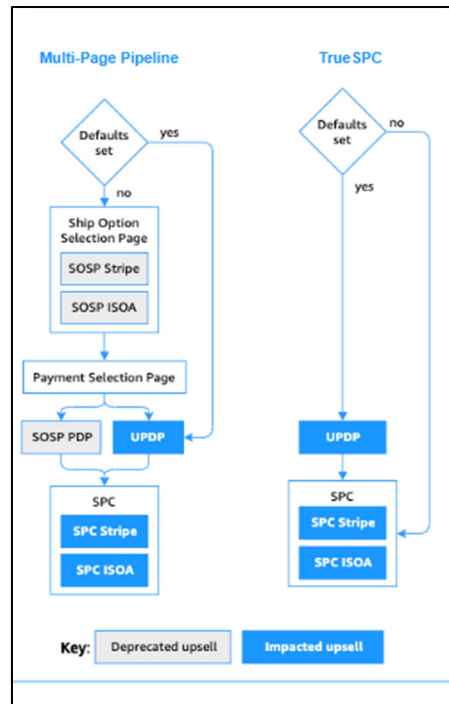


Figure 15: MPP and TrueSPC Flow Charts (Att. 67 at 28)

When it launched TrueSPC, Amazon stopped using the SOSP (and SOSP PDP) and started showing the UPDP only to consumers with saved default billing information. For all such consumers, Amazon uses previously stored billing information to charge them for Prime if they “enroll” on the UPDP page, meaning the consumer is billed for their Prime membership with information they did not provide to Amazon, or even confirm, on their current site visit. Att. 2 at 12.

All consumers, regardless of whether they encounter the UPDP, proceed to a revamped version of SPC to complete their product purchases. On this SPC, there are separate panels for consumers to enter, or confirm their previously-provided, shipping and billing information. Att. 2 at 12-15. The final panel on this SPC, which consumers reach only after entering or confirming their payment information, contains essentially the same SPC Stripe and SPC ISOA upsell options as before. *Id.* As in the earlier version of SPC, customers who select the Prime

option in either case are enrolled in Prime when they click the “Place your order” button.¹³

C. Amazon Amassed Evidence of Unintentional Prime Enrollment, While the Individual Defendants Refused to Make Changes.

Although a facial analysis of the above-described enrollment methods clearly demonstrates Defendants’ ROSCA violations, *see infra* pp. 46-55, the additional undisputed facts described below further support a summary ruling against Amazon and demonstrate the Individual Defendants’ liability for Amazon’s unlawful practices. Specifically, the evidence shows that non-executive employees across several Prime and Amazon teams, including the Amazon Shopping Design team, the Prime Content Testing team, the Global Prime Experience (“Prime GPX”) team, and the Amazon Benchmarking team, for years told Amazon and Prime leadership that consumers were enrolling in Prime unintentionally or without understanding Prime’s material terms. Prime and Amazon executives, including Defendants Ghani, Lindsay, and Grandinetti, nevertheless blocked clarity improvements because of the resulting decreases in Prime enrollment and, therefore, revenues.

1. Amazon Leadership Rebuffed 2017 Efforts by the Shopping Design and Content Testing Teams to Fix Nonconsensual Enrollment.

As early as 2015, Amazon’s “Shopping Design” team¹⁴ began observing, in one-on-one observations of Amazon customers, those customers signing up for Prime accidentally, including through both the UPDP and SPC enrollment pages. Att. 14 at 4. By 2017, the Prime Content Testing team¹⁵ agreed that UPDP, and particularly its “Get FREE Two-Day Shipping” enrollment button, created “confusion” between Prime enrollment and the product-checkout process. Att. 15 at 2-3. In response, in early 2017, the Content Testing team experimented with

¹³ On the TrueSPC version of SPC, some consumers see a UPDP-like “panel” or “modal” offer after entering or confirming their payment information. *See* Att. 2 at 23-24.

¹⁴ The Amazon Shopping Design team was a team of user-experience researchers and designers who worked with teams across Amazon, including the Prime organization. Att. 90 at 33:1-37:17.

¹⁵ The Prime Content Testing team’s function was to “make small UX changes to various Prime locations to try to get more people to sign up for Prime and more people to engage with Prime benefits and stay Prime members.” Att. 59 at 13:1-15:22.

1 changing the text on the UPDP enrollment button from “Get FREE Two-Day Shipping” to “Start
 2 your 30-day FREE trial.” *Id.* at 2. Despite the resulting enrollment decrease, the Content
 3 Testing team recommended making the change permanent and taking additional steps with the
 4 goal—quixotic, it turns out—of “prevent[ing] this from ever sliding downhill again.” *Id.* at 3.
 5 To that end, the team, in late 2017, circulated new guidelines” “to focus on raising the clarity
 6 bar.” Att. 22 at 2. Those guidelines included being “ABSOLUTELY clear to the customer so
 7 that they know if they are signing up for Prime or declining the offer.” *Id.* Among other rules,
 8 Amazon had to include the word “Prime” on the Prime enrollment button, and the decline link
 9 could not include language like “I don’t want free shipping.” *Id.*

10 Contemporaneous documents confirm that, just one month into 2018, Prime leadership,
 11 including Defendant Lindsay, then Amazon’s Vice President of Prime and Marketing (Att. 136
 12 at 15:11-21), recognized the negative impact of these clarity¹⁶ guidelines on Prime enrollment.
 13 Specifically, Amazon employees reported to Lindsay and others that Prime was missing its
 14 enrollment goals by [REDACTED], Att. 17 at 3-4. Lindsay asked for “context” for that miss. *Id.* at 3.
 15 Lindsay’s direct report, Cem Sibay (Att. 136 at 26:22-27:10), responded that the primary driver
 16 of the enrollment decline were “changes launched in late November [2017] to update Call To
 17 Actions (CTAs) in order to make the [free trial] Signup process more clear to customers.” *Id.* at
 18 2. Jeff Wilke (Lindsay’s then-boss, *see* Att. 136 at 18:14-19) replied: “Should we immediately
 19 revert to the old CTA language?” Att. 91 at 3. Within days, Amazon did just that, rushing to
 20 reinstate the “Get FREE Two-Day Shipping” Prime enrollment buttons. Att. 39 at 3-4.

19 **2. Amazon Leadership Rejected 2018 Efforts by the Shopping Design 20 and Content Testing Teams to Fix Nonconsensual Enrollment.**

21 Following the early 2018 rollback of clarity improvements, the Prime Contest Testing
 22 team tried again to fix the problem, launching “Project Lucent.” Att. 19 at 5. As part of Project

23 ¹⁶ At Amazon, the “clarity” workstreams were “a series of initiatives” focused on clarifying the Prime enrollment
 and cancellation process. *See* Dkt. #52 ¶ 6.

Lucent, the team ran a series of large-scale tests on different versions of UPDP—with and without clarity improvements. This time, the Content Testing team did not experiment with changing the enrollment button. Instead, they ran tests that, *inter alia*, changed the Prime decline link to a button and removed its “I do not want fast, FREE shipping” language. That change alone resulted in a [REDACTED] drop in Prime sign-ups, as pictured in Figure 16 (Att. 20 at 13):

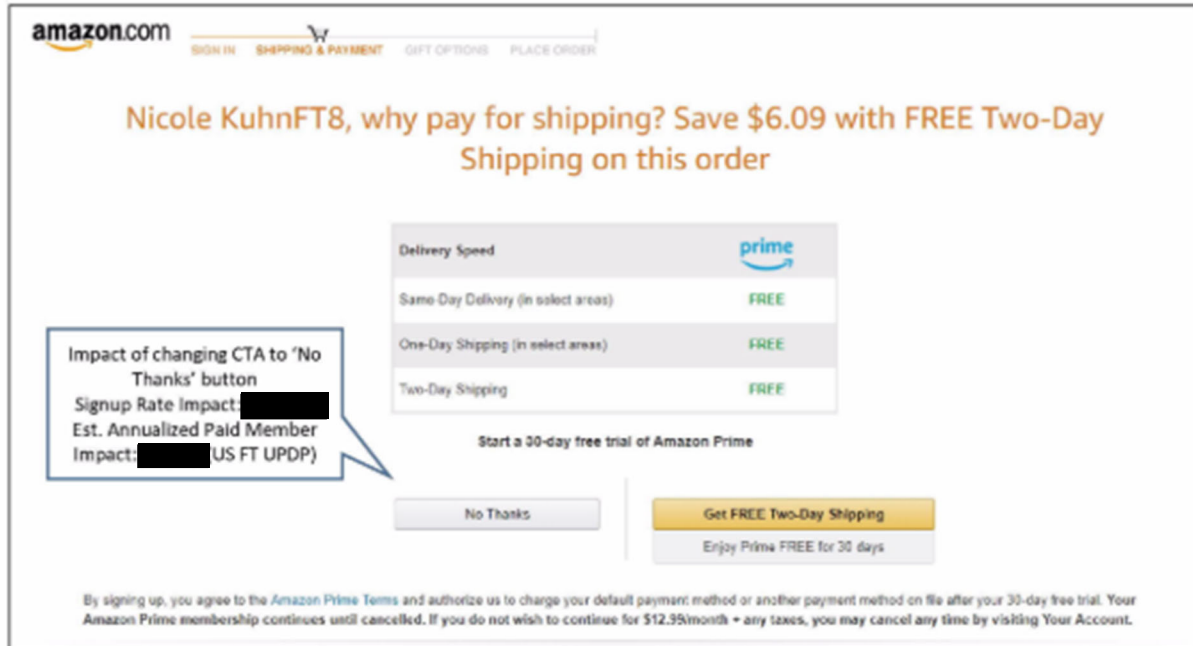


Figure 16: "Project Lucent" Experiment (Att. 20 at 13)

Concurrent with the Contest Testing team's Project Lucent experiments, the Shopping Design team updated Defendant Lindsay and other Amazon VPs regarding Amazon shopper "frustrations."¹⁷ The update includes a video reel of consumers signing up for Prime unintentionally. Att. 21 at 2. The VPs "agreed that this is one of the least customer friendly things we do." *Id.* At that meeting, Prime "leaders," presumably including Lindsay, also confirmed they were aware of the "Top 3" frustrations (including nonconsensual enrollment) and "have heard other teams advocating for solutions to these pain points." Att. 75 at 3, 8.

¹⁷ The Amazon Shopping Design team maintained a database of Amazon customer "frustrations" that the team observed "through direct observation of customer behavior in real shopping tasks." Att. 75 at 7.

1 Nevertheless, in the fall of 2018, the Prime organization decided not to launch the Project
2 Lucent changes, “due [to] large drops in Prime Sign Ups ([REDACTED] in some cases)” without an
3 improvement in the percentage of sign-ups remaining members 90 days later. Att. 24 at 2.
4 Prime made this decision even in the face of “experiment data show[ing] that [REDACTED] of . . .
5 [Non-Prime Amazon] customers will experience Unintended Prime Signups in 2019” without the
6 improvements. Att. 143 at 2. Summarizing the events of the prior year, Mary Pat Gotschall,
7 manager of the user experience (“UX”) researchers within the Shopping Design team (Att. 90 at
8 38:21-39:15), wrote that the reason clarity improvements were not implemented was “a lack of
9 alignment at the VP level in solving customer frustrations when the solutions could have
negative financial impact.” Att. 25 at 2.

10 **3. Amazon Leadership Refused Proposals to Fix Nonconsensual**
11 **Enrollment in 2019.**

12 In March 2019, Amazon’s Shopping Design team reported the Prime unintentional-
13 enrollment issue to Defendant Grandinetti, who was the Amazon Senior Vice President with
14 oversight of the Shopping Design team. Att. 28 at 15:10-12, Att. 77 at 13:8-17, 14:22-15:4.
15 Specifically, Shopping Design reported to Defendant Grandinetti that Defendant Lindsay’s
16 Prime organization “ha[d] not launched [changes] that would eliminate unintended Prime signup
17 frustrations because these improvements will negatively impact [revenues] or would not improve
18 [the rate at which free-trial members becoming paying members].” Att. 26 at 5. The Shopping
19 Design team again identified Lindsay as the relevant VP “team owner.” *Id.* at 6. Grandinetti
20 agreed that Lindsay was the proper “VP owner” for the nonconsensual-enrollment issue and
21 asked for a meeting with Lindsay “to drive alignment on next steps to resolve or agree not to
22 fix.” Att. 48.

23 Three months later, the Prime organization (including Lindsay) and the Shopping Design
team met with Grandinetti. Att. 69. Grandinetti was the most senior attendee and was the only

1 Senior Vice President and Amazon “S-Team”¹⁸ member in attendance. Att. 119 at 10-12. At that
 2 meeting, Grandinetti instructed “that we should be solving for the [signup] frustration without
 3 any impact to . . . without much impact to . . . Prime acquisition.” Att. 68 at 47:15-17. Later,
 4 Grandinetti reiterated the same point by email, setting the impossible-to-achieve goal of
 5 “improv[ing] message clarity while not hurting signups.” Att. 27 at 2.

6 Later in 2019, all three Individual Defendants received a memorandum from yet another
 7 Amazon team: the “Benchmarking” organization. The memorandum outlined the experiences
 8 of several Japanese Amazon customers who “felt ‘tricked’ by Amazon, having signed up for
 9 Prime involuntarily by thinking they were simply clicking to progress with their purchase.” Dkt.
 10 #254-11 at 1. A subsequent Amazon survey of US Prime members—across all enrollment
 11 methods, not merely the challenged “checkout” enrollment methods described above—found
 12 that [REDACTED] of Prime members who had joined in the prior year did so unintentionally, while
 another [REDACTED] could not remember how they enrolled. *Id.* at 12.¹⁹

13 **4. Amazon Launches and Again Quickly Reverses Clarity** 14 **Improvements in Late 2020, All at Amazon Leadership’s Direction.**

15 In December 2019, Jody Biggs—a Director in the Amazon Shopping organization that
 16 included the Shopping Design team (Att. 59 at 120:8-121:5)—flagged for Prime’s Director of
 17 Member Growth, Nahshon Davidai, that the then-current UPDP appeared to be “hiding the
 18 [option to] proceed to checkout without signing up for Prime.” Att. 30 at 3. Davidai agreed and
 19 forwarded the email to the head of Prime’s Content Testing team, who also agreed: “For the
 20 CTA, it’s just painful and something we need to fix. . . . Given the rising concerns and visibility
 around this experience, feels like we need to do something pretty quickly.” *Id.* at 2. Davidai
 then forwarded these emails to Ghani (who had recently assumed control of the Prime

21 _____
 22 ¹⁸ The “S-Team” is the “senior management team at Amazon” and “works together as a whole to manage Amazon’s
 entire worldwide business.” Att. 119 at 11-12.

23 ¹⁹ Notably, even that [REDACTED] is likely an underestimate, as the survey relied on respondents to “self-report” their Prime
 status (Dkt. #255-33 at 2), meaning the survey excluded potential respondents who unintentionally enrolled and had
 not yet learned they had done so.

1 organization, *see* Att. 119 at 9-10), asking for his buy-in to “reset” UPDP to a “much less
2 egregious state.” *Id.*

3 One month later, the Prime Content Testing team ran an experiment that once again
4 included changing the “Get FREE Two-Day Delivery” UPDP enrollment button to “Start my
5 Prime FREE trial.” Att. 32 at 2. “Based on the early results,” the team estimated a “[redacted]
6 signups drop (-[redacted] annualized signups),” while simultaneously confirming the changes to
7 have improved “clarity,” as validated by a “[redacted]” “drop in Prime cancellations for one of the
8 treatments.” *Id.* Nevertheless, notes from a follow-up meeting again describe leadership as a
9 “headwind” to clarity improvements: “direction from senior leaders has been to solve for clarity
10 while not sacrificing growth.” Att. 34 at 2.

11 In June 2020, the Content Testing team prepared a memorandum for Defendant Ghani,
12 reporting: “At a high level, we know that a portion of Prime members were not aware when they
13 signed up for Prime.” Att. 36 at 2. The team explained it had worked with the Prime GPX
14 team—Prime’s in-house team of user-experience researchers and designers (Att. 59 at 64:3-
15 65:9)—to develop “guidelines” for “how clear a Prime upsell needs to be at a minimum level.”
16 Att. 36 at 2. Specifically, the two teams recommended that the enrollment button “clearly
17 indicate the action customers are taking by clicking (*e.g.*, “Join Prime,” not “Get FREE Two-Day
18 Delivery”) and “[n]egative CTAs must be equally weighted with the positive CTA”—*i.e.*, not a
19 hyperlink next to a button. *Id.* at 3. At the ensuing meeting, one attendee referred to Prime
20 unintentional enrollment as an “**unspoken cancer**” and a “symptom of the past” that Prime
21 “need[ed] to correct now.” Att. 37 at 4 (emphasis added). Meeting attendees, including Ghani,
22 agreed “that we need to make changes to enhance clarity, and we have identified the right clarity
23 CX [customer experience] guidelines to focus on.” Att. 35 at 2. At around this same time, a
Prime Content testing team employee pleaded with Ghani to fix nonconsensual enrollment:
“Coming from a place of empathy and care for our customers, we should be look at this as a
defect in our product—especially now. An unknown \$12.99 charge could mean grocery money

1 for a family, gas to fill up a car, or just the last bit of money to make rent.” Att. 94 at 4. Ghani
2 arranged to meet with the employee, noting to in-house counsel that he planned to “coach her on
3 what she puts in email.” *Id.* at 3.

4 In July 2020, the Content Testing team and Ghani presented Defendant Lindsay, to whom
5 Ghani reported at the time, the plan to implement “clarity” guidelines. Att. 38. The
6 memorandum for that meeting summarized the situation: “We have accumulated a significant
7 clarity debt that we need to start paying down: Customer anecdotes suggest that our Prime CX
8 does not meet an acceptable clarity bar for many customers. . . . We need to take immediate
9 action to address these pressing CX issues.” *Id.* at 3. At the end of the meeting, Ghani and
10 Lindsay provided approval to go ahead with implementing the clarity guidelines. Att. 101 at 2;
11 *see also* Att. 40 at 3. On September 17, 2020, Prime launched the improved UPDP shown in
12 Figure 7 above, featuring, *inter alia*, a “Start Your 30-day FREE Trial” enrollment button and a
13 “No Thanks” decline button.

14 Within about two months, Amazon fell behind its Prime member enrollment goal for the
15 year, kicking off extensive internal discussions. *See, e.g.*, Atts. 45-46. One Prime organization
16 employee wrote to Ghani and Lindsay that, although the September 2020 changes “improve[]
17 signup clarity and address[] long-standing customer frustrations,” they had cost Amazon [REDACTED]
18 [REDACTED] paid members in 2.5 months alone. Dkt. #139-1 at 86. On December 3, 2020, the
19 Content Testing team met with Ghani, Lindsay, and other Amazon leaders to discuss the sharp
20 enrollment drop. Ghani admits that, at that meeting, he, Defendant Lindsay, and then-Senior
21 Vice President Doug Herrington made the decision to again “roll back” the clarity
22 improvements. Att. 44 at 209:11-210:4. Contemporaneous notes confirm that the three
23 executives decided to “lean away from” improving the clarity of Prime enrollment and instead
“focus more on driving overall members.” Dkt. #288-1 at 2. They made this decision
notwithstanding the Content Testing team’s continued “strong[] belie[f] that the currently live
templates represent a ‘minimum bar,’ and we have user testing research and customer frustration

1 data to show that each of the changes made is a significant contributor to . . . clarity.” Att. 45.
 2 Defendant Lindsay, however, feared that clarity improvements would drive away *unintentional*
 3 enrollees who nevertheless “end up being happy.”²⁰

4 Unsurprisingly, undoing the clarity improvements also reversed the Prime enrollment
 5 slide. The improvement in enrollment numbers, in fact, was staggering even to Amazon
 6 employees. Upon being informed that the “estimated impact of the UPDP [clarity reversal] is
 7 [REDACTED] paid members annualized” and that “[s]ignup rates improved between [REDACTED],”
 8 Davidai responded “holy crap.” Att. 46. A colleague responded “insane” to the same figures.
 9 Att. 78. Members of the Prime Content Testing team, however, were disappointed. One wrote:
 10 “we are back to the original UPDP templates in the US, and I am doubtful we will make changes
 11 to that in 2021.” Att. 47 at 2. Her European counterpart responded: “I really hope all this didn’t
 mean everything we did so far was for nothing. *Id.* at 3.

12 **5. In Response to the FTC’s Investigation, Amazon Leaders Finally** **Approve, But Slow-Walk, Clarity Improvements.**

13 Following Ghani and Lindsay’s December 2020 clarity reversal, Ghani encouraged the
 14 Prime organization to cease its “focus on prevent[ing]” nonconsensual enrollment and instead
 15 pivot to after-the-fact “detection and correction of mistaken signups.” Att. 49 at 3. Ghani also
 16 wrote to Lindsay that as a result of the December decision to roll back clarity improvements, he
 17 did not believe there was room for “much action on clarity,” especially given that the rolled back
 18 changes were “near the ‘minimum bar’ of what we wanted to improve.” Att. 80 at 3. Lindsay
 19 agreed, adding that this was an “important HDT [hotly debated topic]” to bring to Grandinetti,
 20 among others. *Id.* Ultimately, however, Ghani and Lindsay decided to postpone the Grandinetti
 meeting in order to think more about how to improve clarity “without as severe consequences.”

21
 22
 23 ²⁰ At least two other people recall Lindsay raising the same argument—that Prime should continue enrolling
 unintentional enrollees because those enrollees end up being happy—in a different meeting. *See* Att. 41 at 85:12-
 87:7; Att. 42 at 236:9-237:15.

Att. 50. The meeting between Ghani, Lindsay, and other senior leaders²¹ eventually occurred on May 6, 2021 (the “May 6 Meeting”) and was reframed to consider next steps in light of the FTC’s intervening March 15, 2021 civil investigative demand. *See* Att. 111 at 5 (“Due to regulatory scrutiny on the Prime upsell experience, we may be required to make more immediate changes, mostly likely to the UPDP CX”); *see also id.* at 9 (same, for cancellation); Dkt. #52 ¶¶ 8-13.

At the May 6 Meeting, attendees, including Ghani and Lindsay, agreed Amazon should move Prime’s material terms into the marketing portion of the UPDP page—*i.e.*, outside of the fine-print terms and conditions. Att. 53 at 2. They nevertheless expressly decided *not* to adopt the “Start my Prime Free Trial” enrollment button that had caused enrollment declines (while also improving clarity) in the past. Att. 54 at 17. They also decided against changing the UPDP Prime decline option from a link to a more conspicuous button, on the absurd logic that doing so would introduce “undue friction” to consumers attempting to sign up. Att. 54 at 18. In other words, the changes approved at the May 6 Meeting stopped well short of what the company had launched and then undone in late 2020.

The undisputed facts show that Amazon decided to slow-play even these relatively modest clarity improvements, which Amazon dubbed “CX satisfaction” changes.²² Att. 99 at 2. The Content Testing team estimated that, as a technical matter, the time to implement the changes in the U.S. was about two weeks. Att. 54 at 15. Ghani, however, did not launch the changes until February 2022, nine months after the May 6 Meeting. The slow implementation was Ghani’s deliberate decision. At a July 14, 2021 meeting, Ghani and his direct reports provided “guidance that minimizing the business impact and phasing a rollout [of the clarity improvements]” was the priority. Att. 58 at 2 (emphasis added); Att. 59 at 212:15-213:9.

²¹ Amazon has asserted that Grandinetti did not attend this meeting. He did, however, receive the memorandum prepared for the meeting. Att. 88.

²² Defendant Lindsay disapproved of the name “clarity” (*see supra* note 16) for efforts to clarify enrollment and cancellation, leading Defendant Ghani and a colleague to change the codename to “CX satisfaction.” Att. 99 at 2.

1 Notably, even though the Shopping Design team urged the improvements be implemented prior
2 to the 2021 holiday season due to “the influx of seasonal/holiday shoppers and the heightened
3 risk of customer harm,” the Prime organization resisted. Att. 60 at 4.

4 In February 2022, after approving implementation of the changes, Ghani relayed the
5 decision to Defendant Grandinetti, who, as of November 2021, directly supervised Ghani. Att.
6 61 at 113:13-114:14; Att. 62 at 10; Att. 28 at 22:12-16, 24:17-24. The improvements once again
7 caused a steeper-than-anticipated enrollment decline. Amazon originally estimated it would lose
8 [REDACTED] paying US Prime members as result of the changers, but was forced to revise that
9 estimate up to [REDACTED] lost members. Att. 62 at 3 (compare first row in “Scenario 1” to first
10 row in “Scenario 4”). Based on contemporaneous documents, only the FTC’s investigation
11 prevented Amazon from once again reversing course. A March 2022 document prepared for
12 Amazon leadership explained: “If we roll back the changes that are already live in the US (or
13 delay until Dec.), we’ll recoup [the] negative impact [of the clarity changes]. However, this
14 would postpone what we believe is an improved CX and also *raise concerns in discussions with*
15 *the FTC when we meet with them in Q2.*” Att. 92 at 6 (emphasis added). Similarly, in March
16 2022, Ghani urged his team to “delay as much as possible” making the clarity improvements
17 outside of the United States “if you aren’t being pressured by regulators.” Att. 61 at 136:16-18;
18 Att. 63 at 4. Ghani reported this purposeful delay to Grandinetti. Att. 125.

19 At around this same time, the Amazon Benchmarking team—which conducted the above-
20 described 2019 survey revealing substantial nonconsensual enrollment—returned to Ghani to
21 inform him of their plan to revisit the issue with Grandinetti because it had not been resolved.
22 Dkt. #255-18 at 6. After a lengthy discussion regarding what the Benchmarking team should tell
23 Grandinetti, the team updated Grandinetti in private on or around March 16, 2022. Dkt. #255-
18; Att. 129 at 3. Grandinetti requested a follow-up meeting, at which the Benchmarking team
reiterated its view that the recent UPDP changes would not “fully address the [nonconsensual
enrollment] issue” in part because the “visual nature of the accept and decline CTA boxes . . .

1 was regularly mentioned as a pain point by customers we interviewed.” Dkt. #255-15 at 4.

2 Tellingly, Grandinetti did not mandate changes after receiving the Benchmarking team
3 report. Instead, he continued to set the tone from the top that Prime enrollment was critical to
4 Amazon’s success. Following an August 2022 meeting with Grandinetti, a Prime employee
5 reported that Grandinetti directed the Prime organization to be “laser focused on driving member
6 growth.” Att. 65. He added that the Prime team “need[ed] to adopt a tone of hunger for growth
7 and dissatisfaction for our current projected growth rates. Even if we hit our goals they’re not
8 enough. Amazon needs us to drive higher growth.” *Id.*

8 **D. Amazon’s Cancellation Survey Confirms Subscribers’ Nonconsensual**
9 **Enrollment.**

10 It is undisputed that [REDACTED] of Prime subscribers have explicitly told
11 Amazon they “did not intend” to sign up for Prime. This information is obtained by Amazon as
12 part of its “cancellation survey,” offered to subscribers immediately after they cancel Prime. Att.
13 72 ¶¶ 52-53. Amazon conducted the first iteration of the survey between November 1, 2018 and
14 February 28, 2019. Att. 71 at 2-4. Among [REDACTED] U.S. respondents, [REDACTED] said that they
15 cancelled Prime because they “did not mean to sign up for Amazon Prime.” *Id.* Among almost
16 [REDACTED] U.S. respondents who had been Prime members for less than one year, [REDACTED] said they “did
17 not mean to sign up.” *Id.*

18 Beginning in mid-2020, Amazon conducted a larger-scale, “standardized” version of the
19 survey and has accumulated [REDACTED] of responses since then. Att. 72 ¶ 39. Question 3 of the
20 survey asks consumers why they cancelled Prime. One answer option is: “I did not intend to
21 sign up for Prime.” *Id.* at 34. Similarly, Question 4 asks consumers to select all “additional
22 reasons” they cancelled Prime, again offering “I did not intend to sign up for Prime” as an
23 option. *Id.* It is undisputed that [REDACTED] of all Prime members who enroll through UPDP indicate,
in response to Question 3 or 4, that they did not intend to sign up for Prime. Att. 72 at 94
(Figures 44-45). For SPC, the figure is [REDACTED] and, for SOSP PDP, [REDACTED]. *Id.* These results do not
include those consumers who inadvertently signed up for Prime, but still did not know they had

1 it, and therefore could not take the cancellation survey.

2 It is also undisputed that clarity changes in the UPDP, described above, correspond to
 3 fluctuations in “did not intend” responses. For example, [REDACTED] of Prime members who enrolled
 4 from September-December 2020, when Amazon implemented short-lived clarity improvements,
 5 later stated that they did not intend to sign up for Prime. Att. 72 at 45-47. Once Amazon undid
 6 these changes, unintentional enrollment increased by over [REDACTED], with [REDACTED] of all UPDP
 7 respondents saying they “did not intend” to sign up. *Id.* Then, when Amazon, in February 2022,
 8 implemented certain half-measures in response to the FTC’s investigation (*see supra* pp. 25-28),
 9 the unintentional enrollment percentage dropped to [REDACTED] — between the [REDACTED] rate from late 2020
 10 and the [REDACTED] rate following the December reversal. *Id.*

11 Similarly, it is undisputed that almost [REDACTED] subscribers who enrolled through the
 12 first image below (Figure 17), as part of a Content Testing experiment, indicated they did not
 13 intend to enroll, when compared to the second, clearer version. Specifically, [REDACTED] of survey
 14 respondents who signed up through the top image “did not intend” to sign up, compared to
 15 [REDACTED] of people who enrolled through the bottom version. Att. 74 ¶¶ 10-11; Att. 134 at 6.

Control

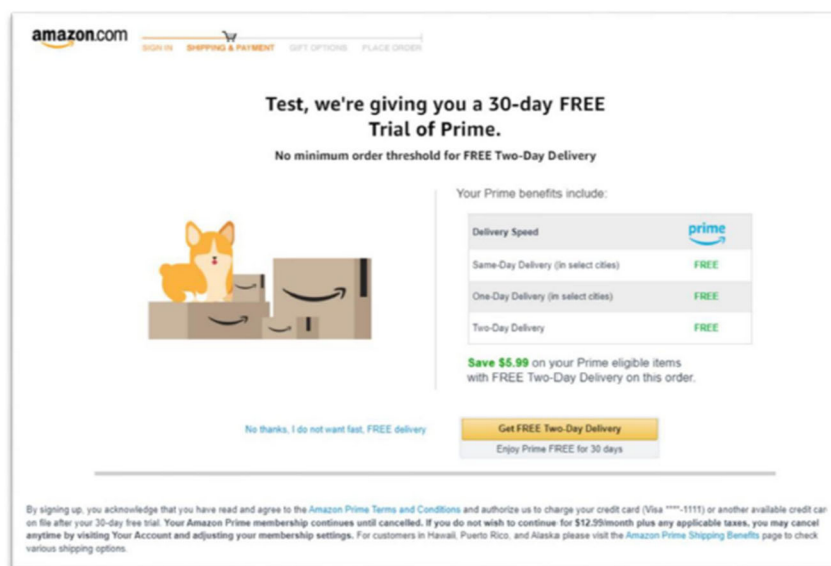


Figure 17: UPDP from January 2021 Experiment (Att. 134 at 6)

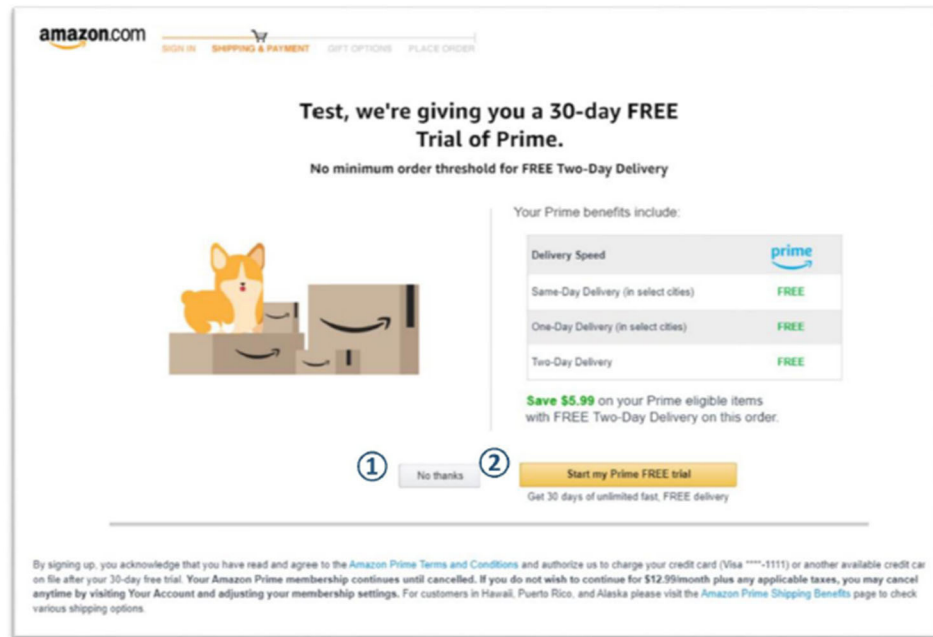


Figure 18: UPDP from January 2021 Experiment (Att. 134 at 6)

In late 2020, an Amazon economist used the cancellation survey results to estimate the extent of Prime nonconsensual enrollment. The economist concluded that [REDACTED] of all U.S. Prime members still in their free-trial period were more likely than not to have enrolled in Prime unintentionally. Att. 102 at 3. Amazon disputes the significance of the economist's work—based on newfound self-criticism of its own cancellation survey—but not the accuracy of his calculations. Att. 132 at 174:2-13. The same economist calculated that in 2020 alone, [REDACTED] U.S. consumers signed up for Prime unintentionally. Att. 135 at 3.

II. PRIME CANCELLATION

Amazon calls the process by which Prime members cancel their subscriptions online the “Iliad.” See, e.g., Att. 130 at 3. The undisputed facts demonstrate that Amazon has complicated the Iliad by (1) making it difficult for consumers to find its entry point and misleadingly labeling the entry button “End Membership” and (2) forcing consumers to request cancellation four times, including by clicking another misleading “end” button, before honoring the request. Amazon and Prime leadership were aware of these problems, but did nothing to fix them until taking certain half-measures in response to concerns raised by the FTC and European Commission.

1 **A. Amazon Forced Consumers to Find an “End Membership” Button That Did**
2 **Not End Membership.**

3 To cancel, Prime members first had to find the entrance to the Iliad, on the “Prime
4 Central” page. According to Amazon, there are several ways to find the Prime Central page.
5 Att. 104 ¶ 36. Prime members could navigate to their individual Amazon “Account” page by (1)
6 clicking “Accounts and Lists” in the top right corner of the Amazon home page; (2) hovering
7 over “Accounts and Lists” and then selecting the third link in the second column (“Account”); or
8 (3) clicking on the three lines on the top left of the home page and then clicking “Your Account”
9 or “Hello, [name].” *Id.* ¶ 36(a)-(d). Once on the Account page, the consumer then had to click a
10 button labeled “Prime” (from among 12 other buttons) to reach Prime Central. *Id.* at 307.

11 Alternatively, to reach Prime Central directly, a consumer can (1) hover over “Accounts
12 and Lists” on the Amazon homepage and select the 15th link in the second column
13 (“Memberships and Settings”), which brings them to a page on which they must click a white
14 button labeled “Prime Membership Settings,” or (2) hover over the “Account & Lists” dropdown
15 menu on Amazon’s homepage, then click the sixteenth option in the second column, which reads
16 “Prime Membership.” Att. 104 ¶ 36(a); *id.* at 262, 284-85. Finally, according to Amazon,
17 consumers could search on Amazon.com for “cancel Prime,” which results in the consumer
18 receiving a result featuring a link to reach Prime Central. Att. 104 ¶ 36(h).

19 Upon arriving at Prime Central, consumers had to locate and click a “Manage
20 Membership” link toward the top right corner of the page, pictured in Figure 19 (Att. 103 at 28):
21
22
23

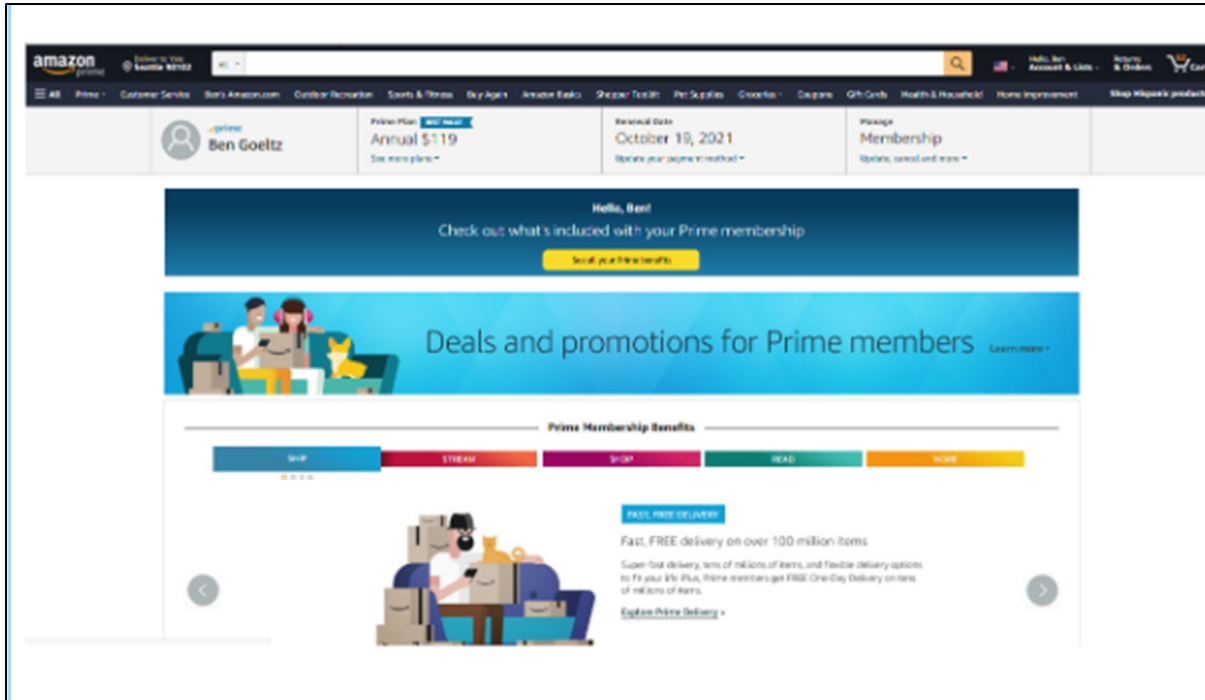


Figure 19: Prime Central

Clicking “Manage Membership” opened a menu, pictured in Figure 20, that included an “End Membership” button. Immediately above that button, Amazon placed text reading: “By ending your membership you will lose access to your Prime benefits.” Clicking “End Membership,” however, did not either end one’s membership, or result in loss of access to Prime benefits, but rather simply allowed a consumer to *start* the Iliad process. In other words, if a consumer clicking “End Membership” reasonably thought he or she had “ended their membership,” Amazon nevertheless continued billing them for Prime.

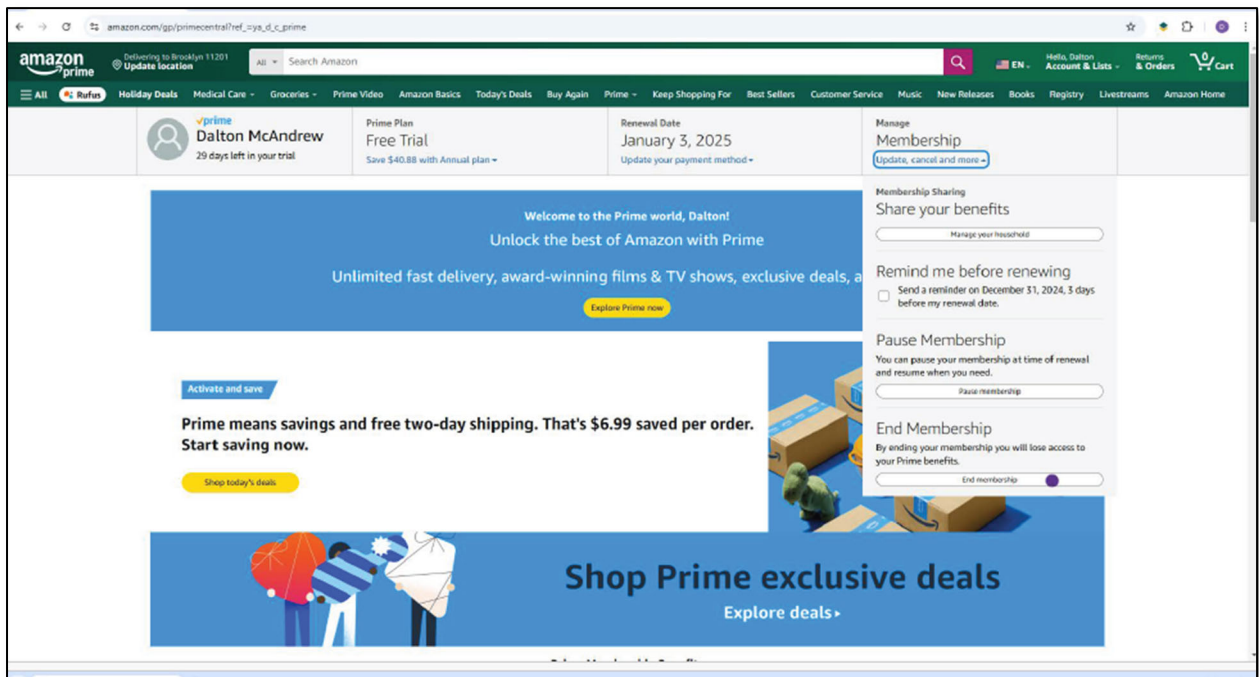


Figure 20: Prime Central "Management Membership" Dropdown (Att. 150 at 115)

There are also two ways to proceed directly to the Iliad without navigating through Prime Central. According to Amazon, a consumer can search Google for something like “cancel Prime” and then click a search result reading “Cancel Your Amazon Prime Membership.” Att. 104 ¶ 36(i). That takes the consumer to an Amazon.com page, pictured in Figure 21 (Att. 150 at 154), titled “End Your Amazon Prime Membership” and containing the following text: “You can cancel Prime by selecting the End Your Prime Membership button this page.” Clicking the “End Your Prime Membership” does not end the Prime membership, but rather puts the Prime member at the start of the Iliad. *Id.* at 158. Consumers can reach this same misleading “End Your Amazon Prime Membership” page by selecting the “Help” link all the way in the Amazon footer and then clicking a button that reads, “End Your Amazon Prime Membership; Cancel your membership easily via this page.” *Id.* at 120-29.

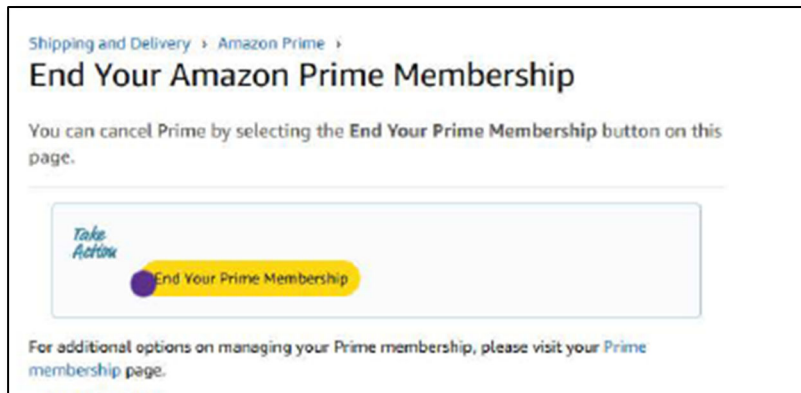


Figure 21: "End Your Amazon Prime Membership" Page (Att. 103 at 369)

B. After Entering the Iliad, Consumers Must Request Cancellation Three Additional Times.

After clicking “End Membership,” the consumer has to navigate through three more pages, each of which requires them to reaffirm (for the second, third, and fourth times) that they want to cancel. Amazon referred to these pages as the “Marketing Page,” the “Offer Page,” and the “Cancellation” Page, respectively.

1. Marketing Page

The “Marketing Page” is the first page consumers encounter after clicking “End Membership,” assuming they have not closed their browser thinking they already completed the cancellation process. The page does little to disabuse Prime subscribers of the notion that they *already* have cancelled their memberships, and in fact adds to that impression. For example, in one version of the Marketing Page (Declaration of Adam Rottner, Att. 3), the header thanked the consumer “for being a member with us” and invited them to “take a look back at your journey with Prime”—language that indicates the consumer *already* ended that “journey” when they clicked End Membership. In fact, however, the consumer needed to click a button on the bottom of the page to continue with cancellation. In the image below, that button reads “Continue to Cancel.”

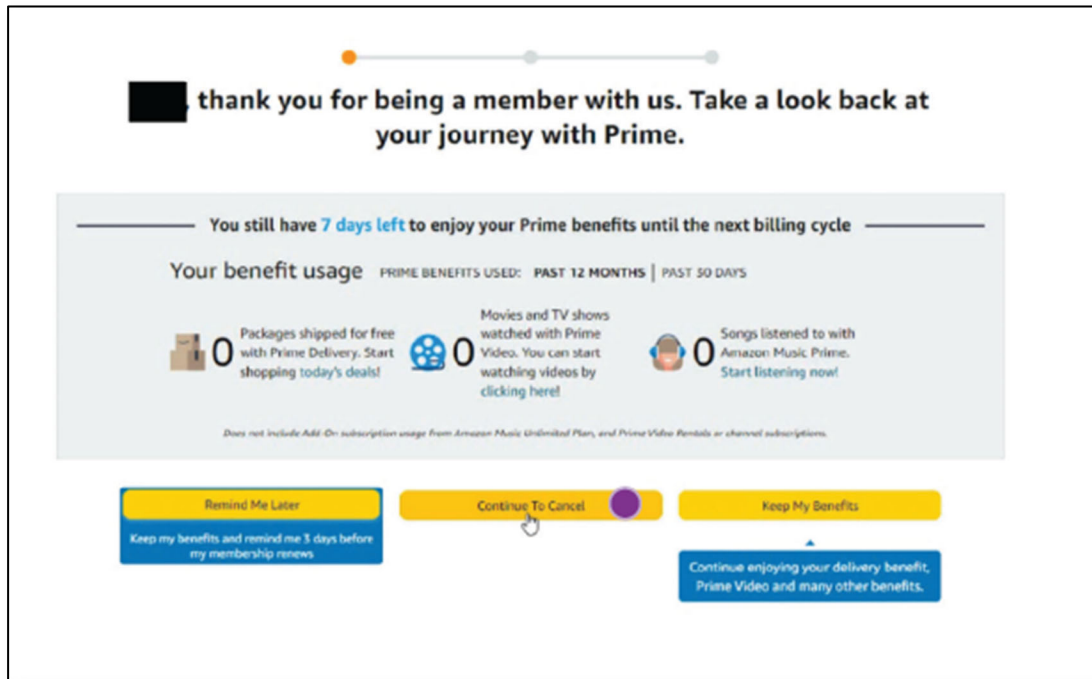


Figure 23: Iliad "Marketing Page"

11
12
13
14

More recently, as shown below (Declaration of Adam Rottner, Att. 4), the marketing page tells consumers who just clicked "end membership" how many "days left" there are in their billing cycle—implying that the membership will end after those "days left."

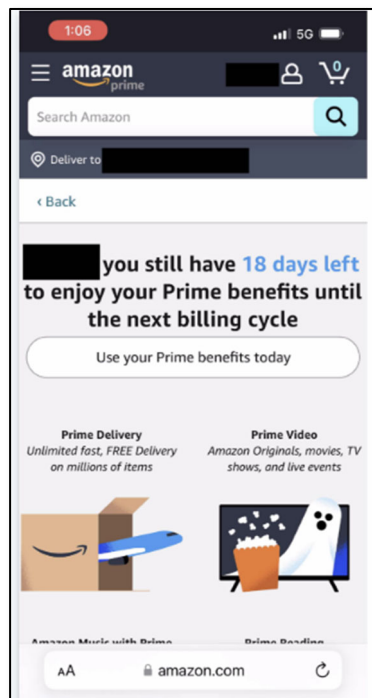


Figure 22: Iliad "Marketing Page" (Top Half)

On mobile devices, as in the images above and below, the consumer also has no way of realizing there are any more steps to take because the bottom-of-the-page “Continue to cancel” button is not visible without scrolling down (Rottner Declaration, Att. 5):

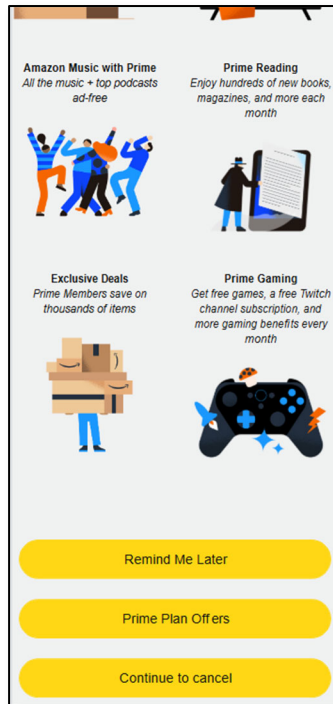


Figure 24: Iliad "Marketing Page" (Bottom Half)

For much of the relevant time period, the Marketing Page presented Prime members with an additional hurdle not shown above. In particular, the button that is now labeled “Continue to Cancel” was previously labeled “Cancel My Membership” or “End My Benefits,” again creating the false impression that clicking the button would result in a completed cancellation. *See, e.g.*, Att. 98 at 3-6 (“End My Benefits”); Att. 89 at 4 (same); Att. 105 at 5, 9 (“Cancel My Benefits”); Att. 113 at 6 (same). Amazon, in fact, starting using the “End My Benefits” label, rather than the less-confusing “Continue to Cancel,” precisely because testing “End My Benefits” showed “surprisingly strong results” in preventing cancellations—specifically, [REDACTED] additional retained U.S. Prime members every year, as of 2018. Att. 97 at 4. There is no evidence that Amazon considered whether these [REDACTED] retained members were simply confused, as opposed to having made a conscious decision not to cancel. Years later, in response to concerns raised by

1 the European Commission, Amazon reverted the button label to “Continue to Cancel.” Att. 95 at
 2 4, 7. That change led to more completed cancellations. Att. 83 at 2. Amazon decided in mid-
 3 2021 that it would make this change in Europe, but stalled doing so in the United States until
 4 October 2022. Att. 95 at 4, 7 (Europe); Att. 107 at 3 (US).

5 On all versions of the Marketing Page, clicking any of the links or buttons on the page
 6 other than the “Continue to Cancel” or “End My Benefits” buttons removes the consumer from
 7 the Iliad.²³

2. Offers Page

8 Consumers who clicked “End My Benefits” or “Continue to Cancel” on the Marketing
 9 Page were not done. Instead, they encountered the Offers Page. On that page, Amazon
 10 presented alternative Prime payment plans to members seeking to cancel; in particular, as
 11 pictured below, they suggested switching from monthly to annual payments (or vice versa) or
 12 considering a student membership or membership for consumers receiving government financial
 13 assistance. Here again, a consumer had to click “Continue to Cancel” to continue the Iliad,
 14 thereby expressing their cancellation intent for the third time. Amazon also, for the third time,
 15 offered a “Remind Me Later” option and, for the second time, offered a “Keep My Benefits [or
 16 Membership]” option. Att. 113 at 7.

22 _____
 23 ²³ Amazon considered, but rejected, the idea of opening Iliad’s “informational links”—such as the “today’s deals”
 link in Figure 22 above—in new browser tabs, rather than navigating the consumer away from the Iliad. Att. 95 at
 7.

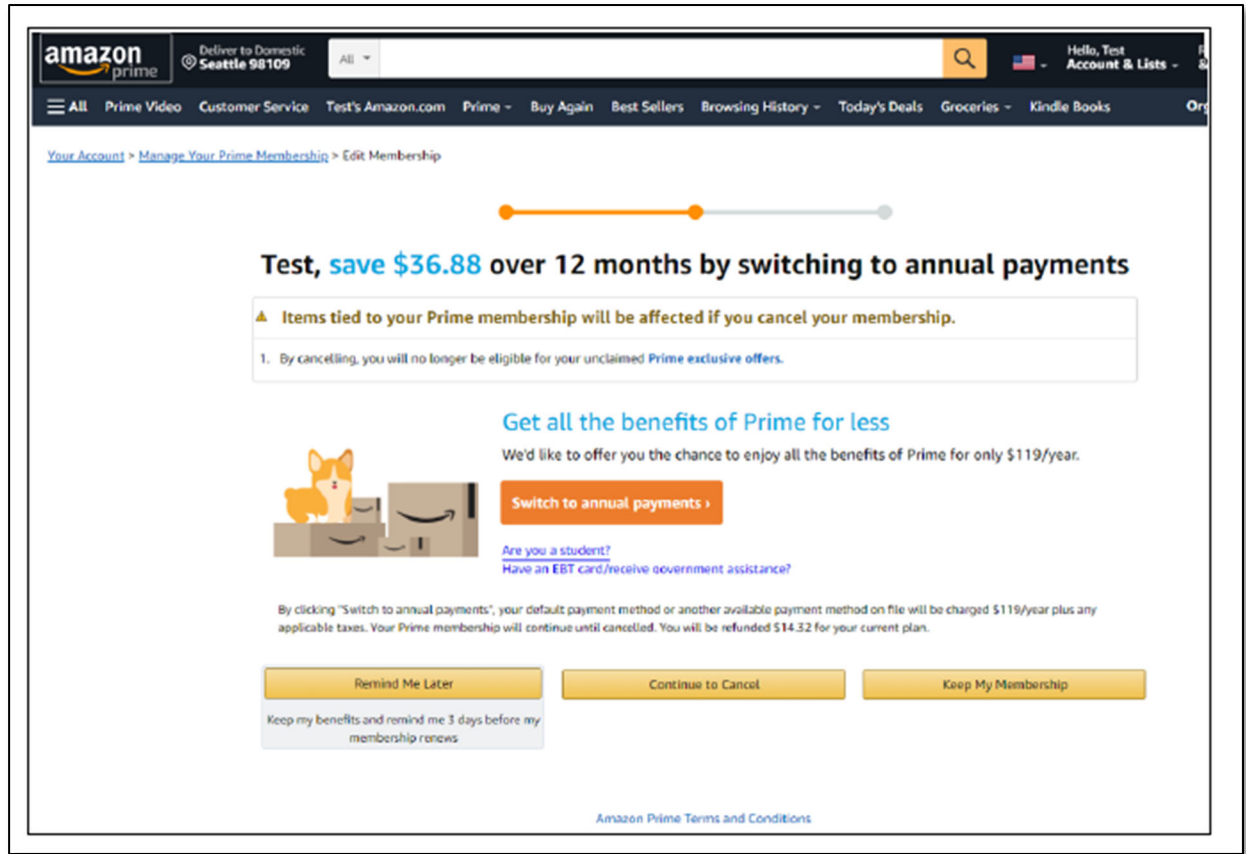


Figure 25: Iliad "Offers Page" (Att. 113 at 7)

3. Cancellation Page

On the third and final page of the Iliad (the "Cancellation Page"), consumers must, for the fourth time, confirm their desire to end their membership. The first two options on the page, however, are "Remind Me Later" (offered for the fourth time) and "Keep My Membership" (offered for the third time, including the earlier "Keep My Benefits" button). Consumers who click either option, or who do nothing at all, continue paying for Prime. This page too contains elements that lead consumers to think they are done with cancellation. Specifically, as pictured below, the progress bar at the top of the page is full, even before the consumer completes cancellation. *See* Att. 100 at 11 (recognizing that consumers understood progress bar "to indicate all steps to be complete"). Additionally the "sorry to see you go" page header once again implies a completed cancellation—*i.e.*, that the member has already "gone." In fact, a

consumer who simply leaves the page will continue to be billed for Prime.

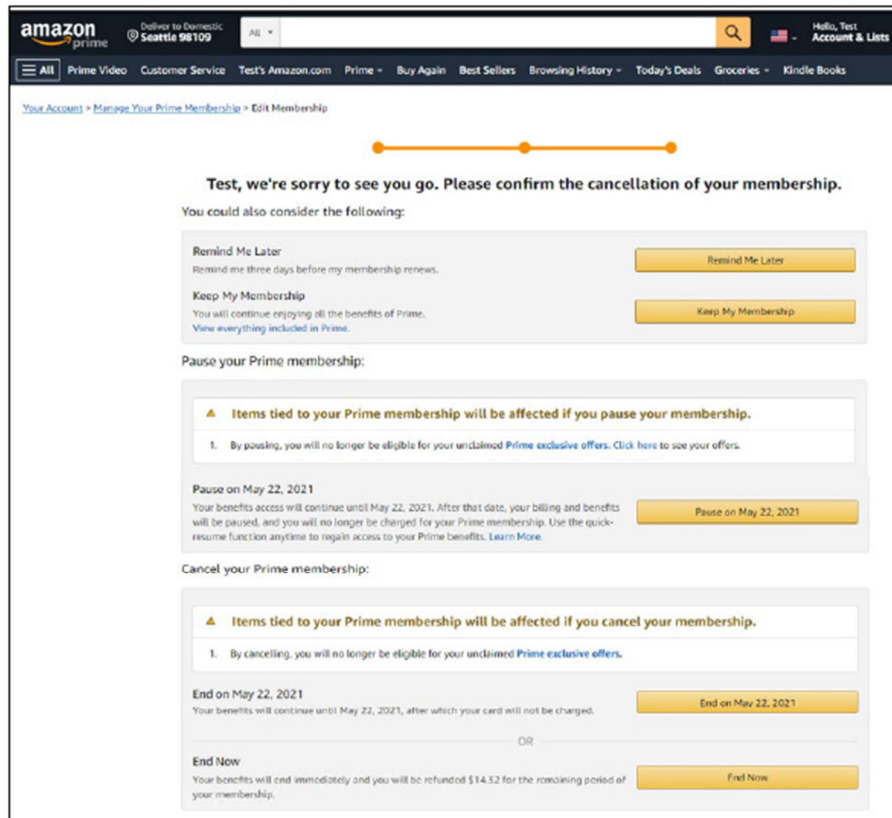


Figure 26: Iliad "Cancellation Page" (Att. 113 at 8)

C. Amazon's Two-Page Version of the Iliad Includes Many of the Same Problems as the Three-Page Version.

In response to European Commission and FTC investigations, Amazon launched a two-page version of the Iliad in the United States in late March 2023. *See* Att. 108 (launch announcement containing screenshots); Att. 111 at 2 (response to European Commission and FTC); Att. 95 at 4 (response to European Commission). The two-page flow removes the Iliad "Offers" page and replaces it with a shortened "Cancellation" page. Att. 108 at 4-5. It is otherwise largely unchanged from the three-page version, including the Membership Page and the steps required to reach the Membership Page.

D. Amazon and Its Leadership Developed the Iliad to Stop Consumers from Cancelling and Were Aware of the Confusion It Caused.

Amazon and its leadership have long been aware of the Iliad's complexity and

1 consumers' difficulty completing it. In fact, the complexity is a feature, not a bug: "The goal of
2 project Iliad was to improve [Prime's] ability to retain members who attempt to cancel their
3 membership." Att. 89 at 2; *see also* Att. 109 at 12 ("When a member enters the [pre-Iliad
4 version of the Prime cancellation flow], they are presented with a series of options *designed to*
5 *prevent them from canceling their membership*. The goal of project Iliad is to *expand* our
6 retention messaging capabilities and enable the launch of *more* retention offers." (emphasis
7 added)).

8 As early as April 2018, the Amazon Shopping Design team recommended to Defendant
9 Lindsay that Prime "[prioritize] clarification of Prime cancellation flow so that customer does
10 not think they have finished when they have not." Att. 75 at 9. There was no apparent follow-
11 up. In the same November 2019 memorandum in which the Amazon Benchmarking team raised
12 the nonconsensual-enrollment issue, *see supra* p. 22, they also alerted all three Individual
13 Defendants of Iliad concerns raised by Japanese Prime members: "When participants did wish to
14 cancel their Prime membership, they were unsure about the process." Dkt. #255-11 at 13. The
15 Benchmarking team's "firsthand analysis" "showed a minimum of 12 actions were required from
16 the Amazon homepage to cancel Prime membership." Again, nothing changed.

17 About six months later, Prime's Content Testing team reported to Defendant Ghani that,
18 although it was aware of Iliad-related confusion, the team had instead taken on the unending task
19 of convincing Prime executives to fix unintentional enrollment: "While we have also identified
20 significant room for content improvements in our cancel flow (moving CTA buttons above the
21 fold, reducing unnecessary content on the page, reducing the number of clicks to cancel), we
22 view the current signup upsell experience in UPDP as more critical to short term clarity and have
23 not yet identified a minimum CX bar proposal for retention locations." Att. 36 at 3.

Another six months later, in December 2020, the Amazon Shopping Design team
reported to Ghani that "[s]elf-service cancellation can be difficult for customers to find, because
the ingress is not surfaced prominently in all expected locations and/or because it uses an

1 unintuitive label . . . Through UX research, we have observed customers overlook or fail to
2 identify with this kind of ‘manage membership’ language [on Prime Central], where they instead
3 seek out the more precise term ‘Cancel.’” Att. 93 at 7-8. The team added that it had “observed
4 customers in UX research misunderstand their progress during self-service cancellation,
5 sometimes abandoning the flow early thinking they had finished it.” *Id.* at 5. They also reported
6 that some Prime subscribers “don’t realize that there are multiple steps, and . . . abandon the flow
prematurely on the incorrect assumption that they finished.” *Id.* at 8.

7 Ultimately, at the urging of the Shopping Design team, Amazon amended the purpose of
8 the May 6, 2021 meeting regarding nonconsensual enrollment (*see supra* pp. 25-26) to include
9 Iliad confusion and complexity. *See* Dkt. #140-2 at 134-35. In the “May 6 Memo,” which all
10 three Individual Defendants received and which was prepared with Ghani and Lindsay’s input
11 (*see* Dkt. #218-1 at 6-7; Att. 88 at 2), Amazon wrote: “Through [customer service] contact
12 mining, cancel survey free form text, and customer studies, we are aware that some customers
13 find the online cancellation flow hard to find and navigate.” Att. 111 at 7-8. The memorandum
14 also confirms Prime members’ “confusion” finding the ingress to the Iliad and recognizes that
15 the “end membership” button on Prime Central “likely sets the expectation that the CTA is not a
16 flow but an action”—*i.e.*, that the button will immediately cancel the subscription rather than
enter them into the Iliad. *Id.*

17 At the May 6 Meeting, attendees, including Ghani and Lindsay, decided the “guiding
18 principle” for the Iliad should be causing people who already decided to click “End
19 Membership,” “to pause and think a bit before cancelling.” Att. 53 at 2. Consistent with that
20 decision, Amazon refused to implement “1-click cancellation” because it (supposedly) was not
“actually in [consumers’] best interests.” *Id.*

21 A June 2021 memorandum, reviewed by Ghani, confirms the Prime organization
22 considered—in response to concerns raised by the European Commission—“improv[ing] ingress
23 to Iliad” by “mak[ing] it easier to find Iliad from PC/account management widget,” but decided

1 not to do so in order to “limit the specific commitments we make to EC.” Att. 9 at 5. Amazon
 2 estimated making Iliad easier to find would lose Prime [REDACTED] subscribers. *Id.* at 8.
 3 An earlier version of this document confirms Amazon also considered renaming the confusing
 4 “End Membership” Prime Central button in order to make clear that the “button will not
 5 immediately cancel” (Att. 79 at 4, 8), but apparently decided not to do so. Contemporaneous
 6 documents make clear Ghani was heavily involved in discussions regarding how to change Iliad
 7 in response to European Commission inquiries. Atts. 81, 82. Ultimately, Amazon delayed
 8 making even minimal changes to Iliad in the United States (such as relabeling the “End My
 9 Benefits” Marketing Page button) until the fall of 2022, and did not launch a two-page version of
 10 Iliad in the United States until the end of March 2023, more than two years after the FTC’s
 investigation started and only months before the litigation began. Att. 106 at 2; Att. 108 at 2.

11 Throughout this period, employees across Amazon’s Shopping Design team and Prime’s
 12 GPX team objected to Iliad’s complexity. One Shopping Design team member wrote: “Our
 13 cancellation flow is embarrassing. It’s crazy to me how defensive they [the Prime organization]
 14 are about it.” Att. 76 at 2. A Prime GPX document was equally critical: “The cancellation
 15 experience will continue to erode customer trust and brand reputation. The current flow has
 16 significant accessibility challenges that put our members at risk of being confused at a very
 17 critical moment in their membership.” Att. 85 at 9. One Prime GPX copywriter was more blunt:
 18 “The reason people are confused by the Iliad flow is that it’s confusing and a UX anti-pattern²⁴
 19 called a Roach Motel that literally gets us posted to sites like Darkpatterns.org and the New York
 Times. We can’t get rid of that thing fast enough.” Att. 87 at 5.

20 **E. Prime Subscribers Who Do Not Finish the Iliad Use Less Benefits Than They
 Did Before Attempting to Cancel.**

21 Every year, [REDACTED] do not finish the Iliad. Specifically, although the
 22 percentage has varied over time, it is undisputed that approximately [REDACTED] of all Prime subscribers

23 ²⁴ “Anti-pattern” is an alternative term for “dark pattern.”

1 that enter the Iliad do not finish it. Att. 120 at 3. Notably, approximately [REDACTED] of those
 2 failed cancellers *do not use any Prime benefits* for the 90 days after the failed cancellation
 3 (excluding the first five days of that period).²⁵ See Att. 72 at 57 (¶ 119), 59 (Figure 28).
 4 Additionally, the [REDACTED] of failed cancellers do not proceed past the first Iliad page (the
 5 Marketing Page). Att. 130 at 2. Similarly, [REDACTED] consumers who exit the Iliad take no “exit
 6 action”—meaning, for example, that they simply close their browsers—rather than affirmatively
 7 clicking a button or link that might signal they made an affirmative decision not to cancel. Att.
 8 130 at 4-5. Amazon recognized this as evidence that “customers may think they have
 9 successfully canceled their membership . . . and exit the flow (by exiting the window or clicking
 out of the flow) when in fact, they have to confirm on the last confirmation page.” *Id.*

10 Amazon has asserted that consumers leave Iliad at the Marketing Page not because they
 11 think they are finished, but because Amazon has reminded or informed them of Prime’s benefits
 12 and, therefore, they have chosen to remain Prime members. If Amazon were correct, benefit
 13 usage among failed cancellers would *increase* after their unfinished Iliad visit. In fact, the
 14 opposite is true: consumers who do not complete the Iliad are *more* likely to use zero Prime
 15 benefits in the 90 days after exiting the flow than they were in the 90 days before entering. Att.
 16 72 at 58-59. Similarly, Prime subscribers who exit the Iliad without clicking a link or button
 17 (e.g., consumers who simply close their browser) are [REDACTED] *more* likely to have no benefit usage
 18 in the ensuing 90 days than are Prime members who affirmatively accept an offer within Iliad to
 19 remain Prime members. *Id.* at 61. In other words, Prime subscribers who enter Iliad but fail to
 20 cancel or to affirmatively accept an offer to remain in Prime are *less* likely to use their benefits
 21 after leaving Iliad than they were before entering it.

22 ²⁵ This does not mean that the other [REDACTED] are aware they are Prime members. Rather, it is easy for Prime
 23 members to use Prime benefits without realizing they are doing so. For example, Amazon defaults Prime members
 to Prime free shipping, meaning a consumer who thinks they have cancelled Prime can “use” their Prime shipping
 benefit without ever choosing to do so. See, e.g., Att. 121 at 13-17.

F. Amazon Redirects Consumers Who Attempt to Cancel by Phone to the Iliad.

Until mid-2019, Amazon generally permitted customers who could locate the customer service phone number to cancel by calling customer service and speaking with an agent. This was a problem for Amazon because customer service agents did not try to convince Prime subscribers not to cancel. *See* Att. 124 at 2 (“[T]here is a lost opportunity to save Prime members who are in the process canceling: [Customer Service] agents do not optimize for providing members pertinent information that encourages members to remain Prime . . .”). Amazon “fixed” that problem by instructing customer service agents to respond to cancellation requests not by honoring the requests, but instead by sending consumers a link to enter the Iliad. *See id.*; Att. 123 at 4-5. Amazon estimated that by sending consumers these links, rather than simply cancelling their memberships, Amazon would “save” ██████████ Prime members annually. Att. 123 at 4. Even customers who are able to cancel by phone must endure, on average, a nine-minute phone call to do so. Att. 124 at 2.

LEGAL STANDARD

“Summary judgment is warranted when the evidence, viewed in the light most favorable to the non-moving party, shows ‘that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Narambatal v. DHS*, --- F. Supp. 3d ----, 2025 WL 754530, at *3 (W.D. Wash. Mar. 10, 2025) (Chun, J.) (quoting Fed R. Civ. P. 56(a)). “A fact is ‘material’ if it might affect the outcome of the case.” *Metro. Group Prop. & Cas. Ins. Co. v. Fite*, 738 F. Supp. 3d 1371, 1375-76 (W.D. Wash. 2024) (Chun, J.) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A factual dispute is “genuine” “only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Id.* at 1376 (quoting *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)). “The moving party bears the burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law.” *Id.* (citing *Celotex Corp. v. Catlett*, 477 U.S. 317, 323 (1986)).

ARGUMENT

There is no genuine dispute regarding the facts establishing that Prime is a subscription program covered by the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8403. Nor is there any dispute regarding the manner in which Amazon enrolled consumers in Prime and the steps Amazon required to allow them to cancel. Those undisputed enrollment and cancellation practices violate ROSCA because Amazon fails to clearly and conspicuously disclose Prime's material terms, obtain express informed consent from Prime enrollees, or provide simple mechanisms to cancel Prime. Similarly, summary judgment is appropriate as to the Individual Defendants because there is no genuine dispute regarding material facts establishing each Individual Defendant had the authority to control or directly participated in Amazon's unlawful enrollment and cancellation practices. Finally, in the alternative, the FTC is entitled to judgment as a matter of law regarding the Amazon's affirmative defenses.

I. PRIME IS SOLD WITH A "NEGATIVE OPTION FEATURE" AND IS THEREFORE COVERED BY ROSCA.

At the motion-to-dismiss stage, Defendants did not dispute that Prime is a subscription service subject to ROSCA. *See* Dkt. #165 at 14. Nevertheless, because Defendants have hinted that they might now challenge this conclusion, the FTC briefly addresses it here.

ROSCA's enrollment and cancellation provisions apply to "goods or services sold in a transaction effected on the Internet through a negative option feature." 15 U.S.C. § 8403. Prime is plainly a "service" sold "on the Internet." Therefore, ROSCA applies if Amazon sells Prime through a "negative option feature." ROSCA incorporates the FTC's Telemarketing Sales Rule ("TSR") definition of "negative option feature": "a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 15 U.S.C. § 8403 (incorporating 16 C.F.R. § 310.2(w)).

Prime fits squarely within this definition because each month or year that a customer fails to take "affirmative action" to cancel their membership, Amazon interprets that failure as the

customer's acceptance to remain a Prime member and continue paying the monthly or annual fee. Other courts have reached the obvious conclusion that automatically renewing subscription programs like Prime are sold through "negative option features" and therefore fall within ROSCA. *See, e.g.,* Order Denying Motion to Dismiss, *United States v. Adobe, Inc., et al.*, No. 24-cv-3630, Dkt. No. 84 (N.D. Cal. May 2, 2025) ("Subscriptions that automatically renew by default unless the consumer affirmatively cancels are 'textbook example[s] of a negative option feature.'") (quoting *United States v. MyLife.com, Inc.*, 499 F. Supp. 3d 757, 762 (C.D. Cal. 2020)); *FTC v. Doxo, Inc.*, --- F. Supp. 3d ---, 2025 WL 887311, at *10 (W.D. Wash. Mar. 21, 2025) ("The statutory definition [of negative option feature] is not as narrow as Defendants argue, and courts have applied it broadly to renewal subscriptions.").

II. AMAZON FAILED TO CLEARLY AND CONSPICUOUSLY DISCLOSE PRIME'S MATERIAL TERMS (COUNT II).

ROSCA requires Amazon to "clearly and conspicuously disclose[] all material terms" of Prime before obtaining consumers' billing information. 15 U.S.C. § 8403(1). "Clear" means "reasonably understandable," and "conspicuous" means "*readily* noticeable to the consumer." *Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1091 (9th Cir. 2020) (emphasis added; quotation marks omitted) (defining "clear and conspicuous" under Fair Credit Reporting Act); *see also* Dkt. 165 at 17 (Court adopting this standard). A "clear and conspicuous" disclosure, therefore, is one that a "reasonable [consumer] would notice and understand." *Barrer v. Chase Bank USA, N.A.*, 566 F.3d 883, 892 (9th Cir. 2009) (defining "clear and conspicuous" under Truth in Lending Act); *see also* Dkt. #84 at 7 (Amazon approvingly citing FTC statement that disclosures are clear and conspicuous if they are "*easily* noticeable and understood by 'ordinary consumers'" (emphasis added)).

The "reasonable consumer" is not an "erudite reader" inclined to carefully parse a website "like a federal judge reading a statute." *Dumont v. Reily Foods Co.*, 934 F.3d 35, 40 (1st Cir. 2019). Rather, the reasonable consumer is "an ordinary consumer acting reasonably under the circumstances . . . who is not versed in the art of inspecting and judging a product." *Elias v.*

1 *Hewlett-Packard Co.*, 903 F. Supp. 2d 843, 854 (N.D. Cal. 2012) (cleaned up). As the Seventh
 2 Circuit has explained: “In applying consumer protection laws, we do not typically hold
 3 consumers to the standard of Adam Smith’s *homo economicus*, a perfectly rational human being
 4 who gathers evidence and evaluates the optimal amount of information. . . . We have limited
 5 time, computational skills, and memories, and we rationally use mental shortcuts to deal with
 6 those limits.” *See Kahn v. Walmart Inc.*, 107 F.4th 585, 596 (7th Cir. 2024). The reasonable
 7 consumer standard therefore recognizes that “consumers are likely to exhibit a low degree of
 8 care when purchasing low-priced, everyday items. . . . This low degree of care does not make
 9 consumers unreasonable—it makes them human, and even economically rational when search
 10 costs and transaction costs are included in the utility calculus. But it also makes them vulnerable
 11 to exploitation by unfair and deceptive practices.” *Id.* at 597. Similarly, the Ninth Circuit has
 12 held that when applying consumer protection statutes like ROSCA, “any misleading ambiguity
 13 [in defendants’ disclosures] . . . should be resolved in favor of the consumer.” *Rubio v. Capital*
One Bank, 613 F.3d 1195, 1200 (9th Cir. 2010) (cleaned up) (applying principle to Truth in
 Lending Act).

14 Additionally, the FTC is not required to show that consumers were deceived or misled in
 15 order to prove a disclosure is not clear and conspicuous. Rather, where the law requires a “clear
 16 and conspicuous” disclosure, a disclosure that does not meet that bar is “*ipso facto* ‘misleading.’”
 17 *Id.* at 1200. Relatedly, as the Court held at the motion-to-dismiss stage, where disclosures “on
 18 their face [are] not clear and conspicuous, . . . the Court need not consider whether a ‘significant
 19 minority’ of consumers were deceived.” Dkt. #165 at 18 n.4.²⁶

20 Here, the undisputed facts prove that ordinary consumers would not readily notice and

21
 22 ²⁶ Even if the Court were to apply a “significant minority” test, the question is not whether a “significant minority”
 23 of consumers were “deceived” (though the FTC does clear this bar) because the FTC has not brought a deception
 count. Rather, the FTC would need to establish, at most, that a “significant minority” of consumers did not “readily
 notice,” *Walker*, 953 F.3d at 1091, Prime’s material terms. The Court can, as it did before, reach that conclusion
 from the face of the Prime enrollment pages or based on the undisputed empirical evidence, *see infra*.

1 understand three material terms of the Prime enrollment transaction: (1) that they are enrolling
 2 in Prime, (2) that their Prime membership automatically renews, and (3) Prime’s monthly cost.²⁷
 3 As explained below, the Court can reach that conclusion from a facial analysis of the undisputed
 4 enrollment processes themselves. Beyond that, however, the undisputed empirical evidence
 5 regarding actual consumer behavior supports entry of summary judgment.

6 **A. A Facial Analysis of the Enrollment Processes Confirms Amazon’s Failure to**
 7 **Clearly and Conspicuously Disclose Prime’s Material Terms.**

8 The clarity and conspicuousness of disclosures can be determined as a matter of law from
 9 a facial analysis. *Barrer*, 566 F.3d at 892. This Court, in fact, ruled at the motion-to-dismiss
 10 stage that the “the material disclosures in UPDP on their face were not clear and conspicuous.”
 11 Dkt. #165 at 18 n.4. The Court was correct for two main reasons. First, the context in which
 12 Amazon enrolls consumers in Prime and “discloses” Prime’s terms—as part of the product-
 13 checkout process—makes it unlikely consumers would look for, find, and understand the
 14 relevance of those terms. Second, Amazon’s disclosures generally appear in small print, below
 15 (sometimes far below) the relevant enrollment button, and overshadowed by the marketing text
 16 and graphics on the page on which they appear. Amazon also violated ROSCA by only
 17 displaying the disclosures *after* obtaining consumers’ billing information.

18 **1. The Context Within Which Amazon Displays Prime’s Material Terms**
 19 **Makes It Unlikely Consumers Will Notice Them.**

20 When evaluating the conspicuousness of online disclosures, “the full context of the
 21 transaction is *critical*.” *Chabolla v. ClassPass Inc.*, 2023 WL 4544598, at *5 (N.D. Cal. June 22,
 22 2023) (emphasis original; quotation marks omitted). Courts properly examine “the full context
 23 of the transaction . . . to determin[e] whether a given textual notice is sufficient . . .” *Keebaugh*
v. Warner Bros. Ent. Inc., 2022 WL 7610032, at *6 (C.D. Cal. Oct. 13, 2022) (citing *Sellers v.*
JustAnswer LLC, 289 Cal. Rptr. 3d 1, 26 (Cal. Ct. App. 2021)); *see also Nguyen v. Barnes &*

²⁷ These terms are all “material” because this information is “important to consumers and, hence, like to affect their choice of, or conduct regarding, a product.” *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).

1 *Noble Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014) (“[C]onsumers cannot be expected to ferret out
 2 hyperlinks to terms and conditions to which they have no reason to suspect they will be
 3 bound”). The Ninth Circuit endorsed this contextual approach in a case previously relied
 4 upon by Amazon: *Oberstein v. Live Nation Entm’t, Inc.*, 60 F.4th 505, 516-17 (9th Cir. 2023)
 5 (cited in Dkt. #84 at 16, 18, 21). The Ninth Circuit explained that a user who “contemplates
 6 some sort of continuing relationship” with an entity is more likely to “scrutinize the [website] for
 7 small text” than a user “merely attempting to start a free trial.” *Oberstein*, 60 F.4th 505 at 516-
 8 17 (quoting, and approvingly discussing, *Sellers*, 289 Cal. Rptr. 3d 1, 26); *see also* Dkt. #165 at
 9 19 (recognizing *Oberstein*’s holding that when “a consumer is attempting to start a free trial,
 10 especially when it is offered as a gift,” that consumer is unlikely to search the page for small-text
 disclosures).

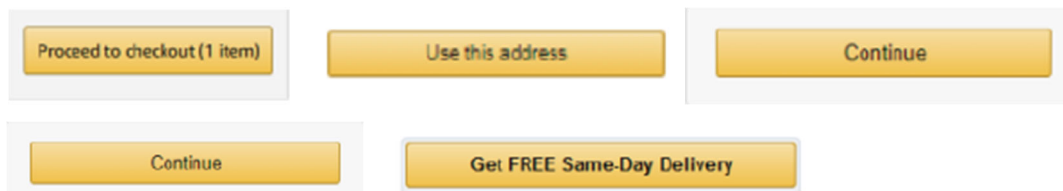
11 Here, the relevant context—primarily, Amazon’s strategy of embedding its UPDP and
 12 SPC Prime enrollment pages within the product-checkout process—made it unlikely many
 13 ordinary consumers would even look for Prime’s material terms, much less notice that Amazon
 14 was enrolling them in a Prime free trial or that the Prime free trial automatically renewed as a
 paying subscription.

15 a. UPDP Context

16 As described above, consumers encounter the UPDP while attempting to purchase a
 17 product on Amazon. *See supra* pp. 4-14. That context introduces myriad problems that result
 18 in consumers being unlikely to look for, notice, or read Prime’s material terms.

19 First, the UPDP does not make clear that consumers are even being given a choice
 20 regarding whether to enroll in Prime. The page header generally simply declares “we’re giving
 21 you a 30-day FREE Trial of Prime”—treating the trial as an automatic add-on to the consumer’s
 22 product purchase. That impression is further proven by Amazon’s telling consumers what “Your
 23 Prime benefits include,” in present tense, again implying the consumer need not do anything else
 to receive the benefits. *See supra* pp. 4-14 (Figures 4-10).

Second, Amazon increases the deception by providing a single large orange button on the UPDP, which the shopper might reasonably think is their only option for proceeding with their product purchase. Pictured below are the buttons a consumer must click to proceed with their product purchase on the four pages before reaching UPDP. Att. 4 at 15-18. The fifth button (“Get “FREE Same-Day Delivery”), by contrast, enrolls the consumer in Prime. Att. 4 at 19. Therefore, “a reasonable consumer could believe that they did not have a choice and the only path to move past the [UPDP] was to click the prominent orange button, which registered them for Prime immediately.” Dkt. #165 at 23.



Third, for most of the last seven years, the UPDP enrollment button has read “Get FREE Same-Day Delivery” or similar language, again indicating the button relates only to the shopper’s product purchase. *See supra* pp. 4-14. Counterintuitively, clicking the “Same-Day Delivery” button actually enrolls the consumer in Prime, *even if the consumer does not finish the product purchase*. The Court previously found that “the text of the two options in the UPDP could lead a reasonable consumer to believe that the buttons are only related to shipping speed, and not a Prime membership.” Dkt. #165 at 23.²⁸ Or, as an Amazon user-experience research manager more bluntly stated: “how the HELL will people know they are SIGNING UP FOR A PRIME TRIAL?” Att. 138 at 4.

Fourth, far from clearly and conspicuously disclosing the UPDP Prime offer, Amazon

²⁸ In some desktop, but not mobile, UPDP versions, a gray “shadow button” beneath the “delivery” button reads “Enjoy Prime FREE for 30 days” or something similar. *See, e.g.*, Att. 4 at 19. Consumers are just as, if not more, likely to interpret that button as an alternative to the orange “Free Delivery” button as they are to read it as somehow clarifying what “Free Delivery” means. In other words, consumers interpreting the gray “shadow button” (reading “Enjoy Prime FREE for 30 days”) as an alternative to the orange “Free Delivery” button may be choosing the orange button mistakenly believing that this choice *declines* Prime, when in reality, it enrolls them immediately.

1 further obscures the offer by relying on consumers to have an unreasonably nuanced
 2 understanding of the distinction between *Amazon's* “core free shipping” and *Prime's* “fast, free
 3 shipping.” Specifically, Amazon offers “core free shipping” to non-Prime members on all items
 4 exceeding a certain dollar amount (currently, \$35). Att. 132 at 105:23-106:6. Amazon, in fact,
 5 touts this core free shipping early in the product-checkout process, telling non-Prime shoppers
 6 that they already qualify for core “free shipping” on certain items even without joining Prime.
 7 *See, e.g.*, Att. 4 at 14 (“FREE delivery”), 15 (“Your order qualifies for FREE Shipping! Select
 8 this option at checkout.”), 17 (“FREE Shipping”) . Then, on the UPDP page, Amazon generally
 9 offers consumers a choice between clicking to “Get FREE Two-Day Delivery” and clicking a
 10 link to decline “fast, free shipping.” As a result, many consumers have no way of understanding
 11 that (1) they do not actually need to click “Get FREE Two-Day Delivery” to get the core free
 12 shipping Amazon already promised, and (2) clicking to decline “fast, free shipping” leaves them
 13 still eligible for *core* “free shipping.” *See, e.g.*, Att. 132 at 100:11-101:1, 119:7-18. Reasonable
 14 shoppers, therefore, easily could think that they are clicking “Get FREE Two-Day Delivery” to
 15 accept Amazon’s prior promise of core free shipping, rather than to enroll in Prime. Worse yet,
 16 Amazon sometimes tells shoppers they are “saving” money by clicking the enrollment button,
 17 even if those consumers are already entitled to free shipping. *See, e.g.*, Att. 5. In fact, the
 18 consumer is only saving money if they otherwise would have chosen to pay for *fast* shipping.

19 Fifth, even UPDP versions, such as the “order agnostic” UPDP, on which the orange
 20 button reads “Start FREE trial” or something similar (*see, e.g.*, Att. 11 at 15), still give
 21 consumers no reason to search out any terms—or “scrutinize the page for small text,” *Oberstein*,
 22 60 F.4th at 516-17—because there is no indication anywhere on the button, or in the page’s
 23 header or marketing content, that there *are* any such terms. *See, e.g., Sadlock v. Walt Disney*
Co., 2023 WL 4869245, at *11 (N.D. Cal. July 31, 2023) (“[Plaintiff] undoubtedly knew that he
 was purchasing a subscription with Disney, but that—by itself—does not mean he should have
 known there was a Subscription Agreement to which he would be bound.”). That is particularly

1 true here because many ordinary Amazon shoppers do not realize they have any alternative but
2 to click the orange button if they want to finish their product purchase.

3 The UPDP page therefore does not make clear the consumer is making *any* decision,
4 much less a decision to enter a “continuing relationship” with Amazon. *Oberstein*, 60 F.4th at
5 516-17. Consumers merely trying to finish their product purchase would have no reason to read,
6 notice, or even look for the small print disclosures of Prime’s material terms at the bottom of the
7 page.

8 **b. SPC Context**

9 The context in which consumers encounter the SPC page and its Prime offers and
10 disclosures also makes consumers unlikely to read, notice, or look for the disclosures. As
11 described *supra* pp. 14-16, SPC is the page on which consumers complete their product
12 purchase. It also contains at least two Prime offers, but, for each, Amazon fails to display
13 Prime’s terms until *after* the consumer might have looked for them. For example, Amazon
14 encourages consumers to click an SPC button reading “Try Prime FREE for 30 days.” At the
15 time consumers click that button, Amazon does not disclose *anywhere* on the page that Prime
16 auto-renews or its price. Instead, Amazon calls Prime “FREE” four separate times and claims the
17 free trial comes with “no commitments.” *See* Att. 4 at 26. Amazon only discloses Prime’s
18 material terms *after* consumers click the “Try Prime FREE” button. Moreover, Amazon only
19 does so in the third block of text under the “Place your order” button. *Id.* at 27. At that point,
20 however, it is more likely than not that ordinary consumers would assume they already had
21 signed up for a Prime free trial and, when clicking “Place your order,” were completing their
22 product purchase. Such a user is unlikely to “scrutinize the page for small text” or hidden terms,
23 especially terms related to Prime rather than their product purchase. *Oberstein*, 60 F.4th at 516-
17; *see also* *FTC v. Am. Fin. Benefits Ctr.*, 2018 WL 11354861, at *9 (N.D. Cal. Nov. 29, 2018)
(misrepresentations not cured by disclosure after consumer “agreed to enroll,” even though
contract had not yet been finalized). After all, a “consumer that does not expect to be bound by

contractual terms is less likely to be looking for them.” *Sellers*, 289 Cal Rptr. 3d at 25 (explaining that consumer buying “a single pair of socks” likely would not “expect to be bound by contractual terms”).

2. Even Ignoring Context, Amazon’s Disclosures of Prime’s Material Terms Are Not Clear and Conspicuous.

Even ignoring context and focusing purely on the visual elements of the UPDP and SPC enrollment pages, those pages do not clearly and conspicuously disclose Prime’s price or auto-renewal. Instead, the terms are generally presented in small print, below the enrollment button, often starting on the opposite side of the page as the button, and overshadowed by marketing text and graphics.

“Website users are entitled to assume that important provisions—such as those that disclose the existence of proposed contractual terms—will be prominently displayed, not buried in fine print.” *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 857 (9th Cir. 2022). This is particularly true when the law, as here, requires *clear and conspicuous* disclosures. Moreover, courts routinely find fine-print terms and conditions like Amazon’s inconspicuous. *See, e.g., Cyberspace.com*, 453 F.3d at 1198 (“small-print disclosures” on back of printed material were insufficient to put consumers on notice they were “agree[ing] to pay a monthly fee”). Additionally, even under the laxer standards for conspicuousness applicable in contract law as opposed to ROSCA, courts are critical of, and often deem inconspicuous, disclosures located *below* the enrollment button to which they apply. *See, e.g., Nguyen*, 763 F.3d at 1178 (finding lack of “reasonable notice” of contract terms even where “Terms of Use” link appeared “directly below” the relevant button); *Lopez v. Dave Inc.*, 2022 WL 17089824, at *2 (N.D. Cal. Nov. 21, 2022) (refusing to find a hyperlink conspicuous where it was “below the ‘Join’ button, meaning a user could enter their mobile number and click ‘Join’ without reviewing the remainder of the page”). Even text immediately *above* an enrollment button may be deemed inconspicuous, especially where “other visual elements . . . draw the user’s attention away.” *Berman*, 30 F.4th at 856-57. More generally, disclosures are not conspicuous if consumers must “parse through

1 confusing or distracting content and advertisements” to see them. *Wilson v. Hunuige, Inc.*, 944
2 F.3d 1212, 1221 (9th Cir. 2019). “If everything on the screen is written with conspicuous
3 features, then nothing is conspicuous.” *Cullinane v. Uber Techs., Inc.*, 893 F.3d 53, 64 (1st Cir.
4 2018).

5 Here, Amazon’s disclosures of Prime’s material terms are generally below (sometimes
6 far below) the enrollment buttons, if they appear at all. On desktop UPDPs, the disclosures start
7 on the far-left side of the page, while the orange enrollment button is on the right. *See supra* 4-
8 14. On mobile UPDPs, the disclosures are sometimes not even visible when consumers click to
9 enroll. *Id.* On both versions, the Prime disclosures are generally far from the page’s more
10 prominent marketing text and graphics and are in small print. *See* Dkt. #165 at 24 (Court:
11 “Here, a reasonable consumer seeking to complete a purchase on Amazon’s marketplace could
12 miss the small print at the bottom of the [UPDP].”). Even pages that include a price disclosure
13 outside of the fine print do so in a way that all but ensures the text will blend into the marketing
14 material on the page. Specifically, they place the price in the same paragraph as text advertising
15 Prime’s benefits (*see, e.g.*, Att. 67 at 23 (left side)) or as a comparatively small subheader
16 between a much larger header and flashier marketing graphics or images (*see, e.g., id.* at 16 (left
17 side)).

18 Similarly, the SPC auto-renewal and price disclosures are the type of fine print courts
19 routinely reject. *See, e.g., Berman*, 30 F.4th 849, 857. The SPC disclosures are in the middle of
20 the third block of text *below* the “Place your order” button, after statements about Amazon’s
21 “privacy notice,” unrelated “conditions of use,” and other “terms.” *See* Att. 4 at 27. In that third
22 block of text, Amazon references other unspecified “Terms and Conditions” and then, in bold
23 text in the middle of the paragraph, mentions “Prime” for the first time and discloses auto-
renewal and price. *Id.* The page as a whole is packed with additional information regarding the
consumer’s product purchase. *Id.* Therefore, the user could easily click “Place your order”
without ever seeing this text. The same is true for the Prime price information displayed in the

1 subheader underneath the large blue text advertising the “FREE trial of Amazon Prime” that
 2 appears on the lefthand side of SPC *after* a consumer clicks to “Try Prime FREE.” *Id.*

3 **B. Undisputed Empirical Evidence Confirms Prime’s Material Terms Are Not**
 4 **Clearly and Conspicuously Disclosed.**

5 Although clarity and conspicuousness can be determined as a matter of law, “empirical
 6 evidence is helpful in determining what a reasonable consumer will understand and readily
 7 notice.” *Rubio*, 613 F.3d at 1200. Therefore, even though it would be proper for the Court to
 8 grant summary judgment based solely on a facial analysis of UPDP and SPC, the Court need not
 9 ignore empirical evidence. Specifically, the undisputed results of the Prime “cancellation
 10 survey” (*see supra* pp. 28-30) show not only (as discussed in the express informed consent
 11 argument, *see infra* p. 61) that many consumers “did not intend” to enroll in Prime, but also that
 12 the percentage of unintentional enrollees increased when Amazon made its Prime disclosures
 13 less prominent and decreased when Amazon made them more prominent. The only plausible
 14 explanation for this pattern is that the Court’s prior facial analysis finding Prime’s material terms
 15 to be difficult to locate is accurate. *See* Dkt. #165 at 21-26.

16 **C. Amazon Impermissibly Discloses Prime’s Terms and Conditions *After***
 17 **Obtaining Billing Information.**

18 ROSCA unambiguously requires Amazon to disclose Prime’s material terms “*before*
 19 obtaining the consumer’s billing information.” 15 U.S.C. § 8403(1) (emphasis added). The
 20 Court rejected Amazon’s prior efforts to avoid this requirement, holding that the “plain language
 21 of ROSCA . . . requires the billing information be collected after the disclosures, not before.”
 22 Dkt. #165 at 26. This requirement is important because consumers are more likely to understand
 23 the purpose for which they are providing their billing information if the merchant first tells them
 what the information is being used for.

Amazon blatantly violates this statutory requirement. Specifically, Amazon collects
 consumers’ billing information in connection with the consumers’ product purchases, *before*
 making the UPDP and SPC Prime upsells. Amazon then uses that previously-obtained billing

information to charge consumers who later enroll, whether consensually or not, in Prime. *See, e.g.,* Att. 4 at 18 (Amazon obtains billing information), 19 (Amazon makes inconspicuous disclosure). This is particularly problematic when consumers abandon their product purchase after clicking a button that enrolls them in Prime, and therefore never even complete the original transaction for which they provided their billing information. Even worse, in some cases, Amazon does not collect or confirm a consumer’s billing information at all during their site visit before enrolling them in Prime. Specifically, if a customer has provided “default” billing information on a prior visit, Amazon simply uses that information to bill the consumer for Prime. *See* Att. 2 at 12. In short, Amazon has violated the requirement that it only obtain consumer’s billing information *after* making the required Prime disclosures. 15 U.S.C. § 8403(1).

III. AMAZON FAILS TO OBTAIN CONSUMERS’ EXPRESS INFORMED CONSENT TO AUTOMATICALLY RENEWING PRIME SUBSCRIPTIONS (COUNTS I, III).

In addition to requiring Amazon to clearly and conspicuously disclose Prime’s material terms, ROSCA requires it to “obtain[] a consumer’s express informed consent” to those terms. 15 U.S.C. § 8403(2).²⁹ Amazon previously conceded that ROSCA requires *at least* the same “unambiguous manifestation of assent” required for the formation of a contract. Dkt. #84 at 14. However, while such assent is necessary, it is not sufficient to satisfy ROSCA. ROSCA requires not just consent but “express *informed* consent.” Amazon fails to obtain express informed consent in two ways: (1) by failing to obtain *any* consent to enrollment in Prime and its material terms, and (2) by failing to clearly and conspicuously disclose Prime’s material terms, resulting in a lack of *informed* consent.

²⁹ If the FTC proves Amazon violated ROSCA by failing to obtain express informed consent (Count III), then the FTC also has proven a violation of the FTC Act’s ban on “unfair” practices (Count I). *See* 15 U.S.C. § 45(a)(1) (barring “unfair . . . acts or practices in or affecting commerce”); *see also FTC v. Amazon.com, Inc.*, 71 F. Supp. 3d 1158, 1164 (W.D. Wash. 2014) (“Courts have repeatedly held that billing customers without permission causes injury for the purposes of asserting a claim under Section 5 of the FTC Act.”).

A. Amazon Does Not Obtain Consent to Prime’s Material Terms.

1. Amazon Does Not Tell Consumers the Consequences of Clicking Its “Enrollment” Buttons.

Consumers generally consent to contract terms by taking “some action, such as clicking a button or checking a box, that *unambiguously* manifests [their] assent to those terms.” *Berman*, 30 F.4th at 856 (emphasis added).³⁰ However, a user’s button click establishes consent “only if the user is explicitly advised that the act of clicking will constitute assent to the terms and conditions of an agreement.” *Id.* at 857. Therefore, the fact that a reference to “terms and conditions” appears in “proximity” to, or even “directly above,” an enrollment button is insufficient, standing alone, to establish consent. *Id.* Based on these principles, the Ninth Circuit in *Berman* held that consumers who clicked the green “Continue” button in Figure 27 below had not consented to the “Terms & Conditions” referenced immediately above the button. The Court explained that although the website stated, “I understand and agree to the Terms & Conditions,” it “did not indicate to the user what action would constitute assent to those terms and conditions.” *Id.* at 858.

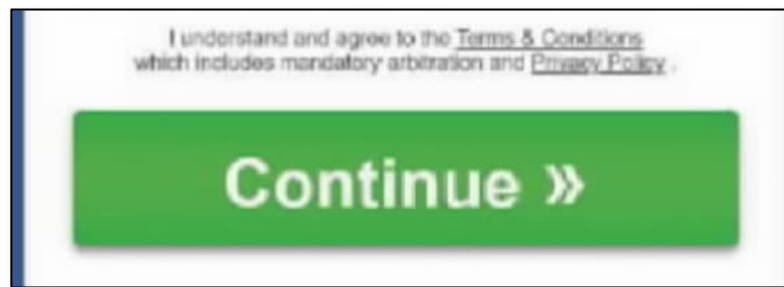


Figure 27: Enrollment Button in *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849 (9th Cir. 2022)

Even where websites state that “by clicking” a specific button, the consumer will be deemed to have agreed to specific terms, courts find no consent where the “by clicking” statement is itself inconspicuous. *See, e.g., Cullinane*, 893 F.3d at 64 (finding consumer did not

³⁰ Many of the cases cited herein, including *Berman*, apply state contract law. Federal courts routinely apply “ordinary state-law principles that govern the formation of contracts.” *Nguyen*, 763 F.3d at 1175 (quotation marks omitted).

1 consent to terms in part because of inconspicuous “text used to notify potential users that the
 2 creation of an Uber account would bind them to the linked terms”). The Ninth Circuit, for
 3 example, expressed “skepticism” that a consumer had consented to the “Offer Details” in the
 4 gray box in Figure 28 below, despite the fact that the text immediately above the “YES” button
 5 stated: “By clicking ‘Yes,’ I have read and agreed to the Offer Details to the right.” *Lee v.*
 6 *Intelius, Inc.*, 737 F.3d 1254, 1259-60 (9th Cir. 2013).³¹ The court noted the relevant text,
 7 although directly above the “Yes” button, was in “small, light-colored print.” *Id.* at 1260. The
 8 Court also considered the context of the transaction, explaining that, as here, the consumer could
 9 reasonably have clicked “Yes” to complete the purchase of the product they had been trying to
 10 buy, rather than to agree to a new contract. *Id.*; see also *Applebaum v. Lyft, Inc.*, 263 F. Supp. 3d
 11 454, 467 (S.D.N.Y. 2017) (refusing to find consent because even though consumer checked box
 12 agreeing to hyperlinked terms, the screen on which consent was purportedly obtained “was
 13 structured as part of a process to verify a phone number,” creating the inference that “the Terms
 14 of Service related only to the [phone text message] verification”).

14 Additionally, courts have held statements *below* an enrollment button explaining the
 15 consequences of clicking the button do not create consent because “a user could . . . click [the
 16 button] without reviewing the remainder of the page.” *Lopez*, 2022 WL 17089824, at *2. At the
 17 very least, when a company relies on a statement below the relevant button to explain the
 18 consequences of clicking the button, that explanation should be *immediately* below the button.
 19 See, e.g., *In re Ring LLC Privacy Litig.*, 2021 WL 2621197, at *5 (C.D. Cal June 24, 2021)
 20 (courts generally find consent “where the user is provided with an opportunity to review the
 21 terms of service in the form of a hyperlink *immediately* above or below a button that must be
 22 clicked to affirmatively acknowledge the terms”) (emphasis added).

23 ³¹ Figure 28 is taken from the PACER version of the Ninth Circuit’s opinion: *Lee v. Intelius, Inc.*, Case No. 11-35810, Dkt. # 64-1 at 17 (9th Cir. Dec. 16, 2013).

Please type in your email address below

By typing your email address below, it will constitute your electronic signature and is your written authorization to charge/debit your account according to the Offer Details to the right.

(This is a secured page)

E-Mail Address:

Confirm E-Mail Address:

By clicking "Yes" I have read and agree to the Offer Details displayed to the right and authorize Intelius to securely transfer my name, address, and credit/debit card information to Family Safety Report, a service provider of Intelius.

YES
And show my report

Click once and wait

[No, show my report](#)

Family Safety Report - Protect Your Family Now!

- Locate registered sex offenders in your area
- Get e-mail alerts when convicted predators move near you
- Monitor sex offenders in multiple areas

OFFER DETAILS:

Simply click "Yes" to activate your trial membership and take advantage of the great benefits that Family Safety Report has to offer plus claim your \$10.00 Cash Back! The membership fee of \$19.95 per month will be charged/debited by Family Safety Report on the credit/debit card you used today with Intelius after your 7-day FREE trial period and then automatically charged/debit each month at the then-current monthly membership fee so long as you remain a member. Of course you can call us toll-free at 1-877-442-5710 within the first 7 days to cancel, and you will not be charged/debited. Please note that by agreeing to these offer details you are authorizing Intelius to securely transfer your name, address, and credit/debit card information to Family Safety Report. No matter what the FREE \$10.00 Cash Back is yours to claim! Remember, if for any reason you are dissatisfied, call our toll-free number to cancel, and you'll no longer be charged/debited. If you used a debit card today, then beginning on or about 7 days from now, your monthly membership fee for Family Safety Report will be automatically debited each month on or about the same date from the checking account associated with that card.

Disclaimers

* Family Safety Report does not provide the Registered Sex offender Report. The report is administered and provided by Intelius and is subject to their Terms of Site Use and Terms & Conditions. Family Safety Report cannot guarantee the accuracy of or information provided within the report.

[Privacy Policy](#) | [Terms and Conditions](#)

Figure 28 (Enrollment Screen in *Lee v. Intelius, Inc.*, 737 F.3d 1254 (9th Cir. 2013))

Here, Amazon's UPDP page fails to tell users they consent to Prime's auto-renewal and price (and, for many UPDP versions, to enrollment in Prime at all) when they click various buttons. In some versions, consumers clicked to "Get FREE Two-Day Delivery" on their product purchase on the right side of the page and then were told, on the left side of the page, below the button and in far less prominent text, that "by signing up," they agreed to Prime's terms. *See supra* pp. 4-14. The "by signing up" text is inconspicuous standing alone, but even setting that aside, ordinary consumers would not understand that "by signing up" actually meant "by clicking 'get free two-day shipping.'"

At least one other court has rejected similarly ambiguous "by signing up" language. *See Chabolla*, 2023 WL 4544598, at *5 ("The textual notice on the . . . webpage refers only to 'signing up.' . . . It is unclear whether 'signing up' means clicking the 'Continue' button . . . , completing the sign-up webflow, or something else."). On some UPDPs, the enrollment button said, "Start my 30-day FREE trial"—an improvement from "Get Free Two-Day Shipping"—but the text explaining the consequences of clicking the button was still inconspicuous (in small print

far from the button) and did not make clear that “signing up” referred to clicking “Start my 30-day free trial.” *See supra* p. 8. These consent problems are compounded by the fact that some ordinary consumers reasonably would not have seen or recognized any alternative to clicking the orange enrollment button if they wanted to complete their underlying product purchase. This Court reached the same conclusion in denying Defendants’ motions to dismiss: “[T]he [UPDP] enrollment button does not make it clear that by clicking ‘Get FREE Two-Day Delivery,’ the customer completed the sign-up process with no additional steps.” Dkt. #165 at 29.

Again, SPC fares no better. Specifically, as discussed *supra* pp. 14-16, SPC *only* displays Prime’s terms and conditions far below, rather than immediately below, the SPC “Place your order” button. The full terms and conditions are the fourth set of linked terms beneath the “Place your order” button, located in the third block of text beneath the button, and are not even identified as the *Prime* Terms and Conditions. *See* Att. 4 at 27. Instead, Amazon simply states, “By placing your order, you agree to Terms and Conditions,” after already stating the user agreed to an unrelated “privacy notice,” unrelated “conditions of use,” and other unspecified “terms.” Then, in the next sentence, Amazon finally says, “Your Amazon Prime membership continues until cancelled.” *Id.* Even that sentence does not indicate that clicking “Place your order” has anything to do with Prime, rather than the consumer’s originally intended product purchase.

2. Empirical Evidence Supports the Conclusion That Amazon Did Not Obtain Consumers’ Consent to Prime Enrollment.

The Court should find in the FTC’s favor on the issue of consent based on the facial analysis above. Again, however, the empirical evidence provides further support for the FTC’s claims. Specifically, [REDACTED] of UPDP enrollees, [REDACTED] of SPC enrollees, and [REDACTED] of SOSP PDP enrollees expressly told Amazon they were cancelling Amazon Prime because they “did not intend” to enroll in the first place. *See supra* pp. 28-30. After Defendants Lindsay and Ghani’s decision to roll back September 2020 clarity improvements, the UPDP unintentional-enrollment percentage jumped to [REDACTED]. *Id.* These percentages almost certainly underestimate

1 nonconsensual enrollment because only a consumer that is aware they are a Prime member, and
 2 is able to navigate the Iliad (as opposed to not cancelling at all or being forced to contact
 3 customer service to cancel), can take the cancellation survey.

4 **B. Amazon Does Not Obtain *Informed* Consent to Prime Enrollment.**

5 ROSCA requires sellers to obtain consent that is both express and informed. 15 U.S.C.
 6 § 8403(2). Consent can only be *informed* if consumers notice and understand what they are
 7 consenting to. *See, e.g., Marsh v. Zaazoom Sols., LLC*, 2012 WL 952226, at *8 (N.D. Cal. Mar.
 8 20, 2012) (ROSCA “contemplates full disclosure and transparency of transactions to
 9 consumers”). Therefore, disclosures that are not “clear and conspicuous” “cannot serve as the
 10 basis for customers’ express, informed consent.” *FTC v. Health Formulas, LLC*, 2015 WL
 11 2130504, at *17 (D. Nev. May 6, 2015). Because the undisputed facts establish Amazon did not
 12 make clear and conspicuous disclosures, *see supra* Section I, those same facts prove consumers
 13 did not give express informed consent. The Court already reached the same conclusion: “[T]he
 14 failure to disclose the material terms clearly and conspicuously—namely, the failure to disclose
 15 that consumers were even signing up for Prime in the first place—means that Amazon did not
 16 receive consumers’ ‘express informed consent.’” Dkt. #165 at 27.

17 **IV. AMAZON DID NOT PROVIDE SIMPLE PRIME CANCELLATION
 18 MECHANISMS (COUNT IV).**

19 ROSCA requires Amazon to provide “simple mechanisms for a consumer to stop
 20 recurring charges.” 15 U.S.C. § 8403(3). “Simple” in this context means “easy.” *See, e.g.,*
 21 Dictionary.com, <https://www.dictionary.com/browse/simple> (last accessed May 25, 2025)
 22 (defining “simple” as “easy to understand, deal with, use, etc.”); *see also* Speech of Hon.
 23 Zachary T. Space of Ohio, 156 Cong. Rec. E2165-02 (Dec. 15, 2010) (ROSCA requires
 businesses to “provide easy ways to opt out of any agreement or subscription service,
 empowering consumers to control their enrollment”). Applying this easy-cancellation
 requirement, one court found a cancellation process violated ROSCA where, after a consumer
 called customer service, “instead of simply processing the cancellation and ending the call,” the

1 company resorted to “a six-part ‘retention’ sales script aimed at convincing the customer not to
 2 cancel.” *United States v. MyLife.com, Inc.*, 567 F. Supp. 3d 1152, 1167-69 (C.D. Cal. 2021).
 3 The court held that “[n]o reasonable factfinder could find this mechanism ‘simple.’” *Id.* at 1169.

4 Here, the Iliad was not simple, and the availability of other cancellation methods for a
 5 subset of consumers does not save Amazon.

6 **A. Amazon’s Iliad Cancellation Flow Was Not Simple.**

7 Amazon complicated the Iliad by (1) making it difficult for consumers to find the starting
 8 point and falsely labeling that starting point “End Membership,” (2) forcing consumers to request
 9 cancellation four times, sometimes including clicking a misleading “End My Benefits” button,
 10 before honoring the request, and (3) repeatedly providing links, buttons, and other distracting
 information designed to derail customers before they completed the process.

11 **1. Amazon Forced Consumers to Find an “End Membership” Button
 That Did Not End Membership.**

12 To cancel their Prime memberships, consumers first had to enter the Iliad. As detailed
 13 above, Amazon knew that this was not a simple task. *See supra* pp. 39-42. It generally took at
 14 least three clicks and required consumers to locate a page called “Prime Central” and understand
 15 that the “Manage Membership” link on Prime Central—which was comparatively inconspicuous
 16 relative to the page’s marketing material—was the ingress point to the Iliad. Assuming
 17 consumers did click on the “Manage Membership” link, they next had to click “End
 18 Membership” and intuit that, in doing so, they had not ended their membership, but instead only
 19 started the process. Other paths to the Iliad also relied on consumers finding, and then clicking, a
 20 different “end membership” button and understanding it would not immediately “end
 membership,” despite Amazon expressly saying it would. *See supra* p. 33.

21 **2. After Entering the Iliad, Consumers Had to Request Cancellation
 Three Additional Times.**

22 Consumers next had to navigate through three more pages, each of which required them
 23 to reaffirm (for the second, third, and fourth times) that they wanted to cancel. For much of the

relevant period, Amazon made that problem worse by mislabeling the only button that allowed the consumer to continue with cancellation “End My Benefits” or “Cancel My Benefits”—again creating the false impression that the consumer was finished upon clicking that button. *See supra* pp. 36-37. In fact, Amazon chose these misleading button labels precisely because they resulted in fewer people successfully cancelling their subscriptions. *Id.* The Marketing Page header also generally advanced the impression that consumers had completed cancellation by, for example, asking them to “look back” at their journey with Prime and by hiding the button to proceed with cancellation at the bottom of the page. *Id.*

3. The Iliad Provided Repetitive, Distracting Information and Options.

Just as the *MyLife* defendant unlawfully used a “six-part retention script” to complicate consumers’ cancellation attempts, 567 F. Supp. 3d at 1167-69, Amazon bombarded consumers who already had chosen to end their Prime memberships with links, offers, and other information that would remove them from the Iliad. On the first page of the Iliad, for example, Amazon offered consumers links to “Start shopping today’s deals!” or “start watching videos by clicking here!” *See supra* Figure 22. Sometimes, these exit-option buttons and links were the *only* clickable options available to consumers who did not scroll down the page to find the button to proceed with cancellation. For example, in Figure 23 above, the only button a consumer sees upon reaching the Marketing Page is the button to “Use your Prime benefits today.” Amazon also made the deliberate decision to have these links immediately steer consumers away from the Iliad, rather than opening the links in separate browser tabs. *See supra* note 23.

The Marketing Page also offered a “Remind Me Later” and “Keep My Benefits” option, even though Amazon had already offered the “Remind Me Later” option on the Prime Central page. On the second page (the “Offer Page”) of Iliad, Amazon offered alternative pricing links, such as “Switch to annual payments,” “[A]re you a student?” or “Have an EBT card/receive government assistance?” *See supra* Figure 25. Amazon also, beneath a large warning icon, invited consumers to view their “Prime exclusive offers.” *Id.* The second page featured a

1 “Remind Me Later” button (for the third time) and a “Keep My Membership” button (for the
 2 second time), each of which removed the consumer from the Iliad. At the top of the third page
 3 of the Iliad, Amazon again offered “Remind Me Later” (for the fourth time) and “Keep My
 4 Membership” (for the third time) options. Consumers who scrolled to the bottom of the page
 5 could click to finally end their membership, but only after ignoring two more links to see their
 6 “Prime exclusive offers.” *See supra* Figure 26.

7 **4. Undisputed Empirical Evidence Supports a Finding That the Iliad Is Not Simple.**

8 As described above, *see supra* pp. 42-43, there is substantial, undisputed evidence
 9 indicating that Prime subscribers who fail to complete the Iliad generally only do so because they
 10 think they have finished the process, and not because they changed their minds. For example,
 11 [REDACTED] of Iliad failed cancellers *do not use any Prime benefits* for the next 90 days.
 12 Additionally, the fact that [REDACTED] failed cancellers do not proceed past the Marketing Page, and do
 13 not affirmatively click a button to remain a Prime member (rather than simply closing their
 14 browsers), demonstrates that consumers believed they finished the Iliad after clicking “End
 15 Membership” and reaching the Marketing Page. Finally, Prime subscribers who enter the Iliad
 16 but fail to cancel are *less* likely to use their benefits after leaving Iliad than they were before
 17 entering it, indicating that they were not convinced to stay by being reminded of their benefits.
 18 *See supra* p. 43.

19 **B. Amazon’s Other Methods for Cancelling Prime Do Not Save Them from Liability.**

20 In their Answer to the FTC’s Amended Complaint, Defendants asserted they comply with
 21 ROSCA by permitting phone and email cancellation. Dkt. #171 ¶¶ C, G. Neither cancellation
 22 option saves Amazon. Email cancellation in particular is an afterthought. *See* Att. 121 at 27
 23 (“Amazon’s website does not direct individuals to this email address to cancel, but any
 individual who interacts with customer service via email may reply to this email address to
 cancel.”). Over the 4.5 years starting in January 2019, just [REDACTED] Prime members cancelled

1 their membership by email, compared to approximately [REDACTED] through Iliad. *Id.* at 29; Att.
 2 120 at 3. Phone cancellation—[REDACTED] (about [REDACTED] U.S.
 3 cancellations over 4.5 years, *see* Att. 121 at 29)—is still far less prominent than Iliad
 4 cancellation. More importantly, phone cancellation is not simple because Amazon, to prevent
 5 cancellations, instructs customer service agents to redirect callers to the Iliad, unquestionably
 6 complicating the cancellation process. *See supra* p. 44.

7 **V. THE INDIVIDUAL DEFENDANTS ARE LIABLE FOR AMAZON’S ROSCA
 8 AND FTC ACT VIOLATIONS.**

9 The Individual Defendants have conceded, as they must, that they are liable for
 10 Amazon’s FTC Act and ROSCA violations if they “participated directly in, *or* had the authority
 11 to control, the unlawful acts or practices at issue.” Dkt. #83 at 15 (emphasis added) (quoting
 12 *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 600 (9th Cir. 2016)). To prevail on the authority-
 13 to-control prong, the FTC need not establish *sole* authority to control. *See, e.g., FTC v. World*
 14 *Media Brokers Inc.*, 2004 WL 432475, at *9 (N.D. Ill. Mar. 2, 2004) (finding individual liability
 15 even where executive “did not have sole control”). Additionally, an individual can be held liable
 16 based on authority to control even if they did not “exercise” that authority. *FTC v. Loewen*, 2013
 17 WL 5816420, at *7 (W.D. Wash. Oct., 29, 2013).

18 Here, the FTC is entitled to judgment as a matter of law against all Individual Defendants
 19 on either the authority-to-control or direct-participation prongs of individual liability.

20 **A. The Individual Defendants Are Liable for Prime’s Enrollment Practices.**

21 There can be no dispute that Ghani and Lindsay had the authority to control Prime
 22 enrollment (and cancellation) because *Amazon repeatedly admitted this* during the FTC’s
 23 investigation. In particular:

- On April 15, 2021, Amazon described Ghani and Lindsay as two of the three executives with “the *most consistent management authority*” over “the policies, practices, and procedures” “relating to the Enrollment and [Cancellation] process for Amazon Prime.” Att. 112 at 3-4 (emphasis added).

- On May 24, 2022, Amazon stated that Ghani and Lindsay had “consistent oversight over the Prime enrollment and cancellation process and visibility into material decisions,” “would have been included in any significant discussion of . . . enrollment and cancellation,” and “*were most responsible for any decisions in those areas.*” Att. 131 at 2, 5 (emphasis added).
- On August 5, 2022, Amazon again described Ghani and Lindsay as two of the three individuals “who have or had *primary oversight and leadership over the Prime program.*” Att. 119 at 9 (emphasis added). From March 2018 through September 2019, Ghani “was responsible for all aspects of the Prime business outside the United States.” *Id.* Since October 2019, Ghani, as Vice President for Global Prime, “oversees the worldwide Prime business,” including the United States, and “*resolv[es] the high-level judgments and debates within the Prime organization* and across Amazon where the Prime organization is confused.” *Id.* at 9-10 (emphasis added). Until November 2021, Ghani reported to Lindsay, who was “Vice President of Prime and Marketing.” *Id.* at 10. In this role, Lindsay oversaw “*all aspects of Prime and Marketing worldwide.*” *Id.* (emphasis added).

Moreover, overwhelming evidence demonstrates these statements are true and that Ghani and Lindsay not only controlled Prime, but also directly participated in its unlawful enrollment practices. *See supra* pp. 18-28. For example, in 2018 and 2019, Lindsay participated in decisions not to fix enrollment-clarity issues. In 2020, Ghani and Lindsay approved certain clarity improvements before rapidly deciding to reverse course in the face of steep enrollment drops. In May 2021, Ghani and Lindsay participated in the decision to take half-measures to “clarify” Prime enrollment, with Ghani subsequently slowing the pace of those changes.

Grandinetti too had both authority to control and directly participated in Prime’s unlawful enrollment practices. Since November 2021, Ghani has reported to Grandinetti rather than

1 Lindsay. Dkt. #171 at 6 (Amazon: “The Prime organization began reporting to Mr. Grandinetti
2 in November 2021.”); Att. 28 at 22:12-16, 24:17-24. Even prior to Grandinetti’s having official
3 Prime authority, he had *de facto* authority over, and in any event directly participated in,
4 Amazon’s June 2019 decision not to address the nonconsensual-enrollment issue if doing so
5 would hurt Prime enrollment. *See supra* pp. 21-22. The Benchmarking team also pushed
6 Grandinetti in 2022 to address Amazon’s enrollment practices, apparently to no avail, as
7 Grandinetti instead focused on Prime’s mission to drive Amazon’s growth. *See supra* pp. 27-28.

B. The Individual Defendants Are Liable for Prime’s Cancellation Practices.

8 On cancellation, Amazon’s admissions regarding Ghani and Lindsay’s authority to
9 control are equally accurate and inculpatory. *See supra* pp. 39-42. Specifically, the Shopping
10 Design and Benchmarking teams flagged the complexity of Prime cancellation for Lindsay in
11 2018 and 2019, but got nowhere. The Contest Testing teams and Shopping Design teams raised
12 the same issues to Ghani in 2019 and 2020, also without success. Ultimately, Lindsay and Ghani
13 participated in preparing the May 6 Memo that framed the Iliad’s problems for discussion at a
14 meeting both attended. At that meeting, Ghani, Lindsay, and other attendees decided, *even with*
15 *the FTC’s investigation pending*, that their goal was to cause people who had already decided to
16 “end membership” “to pause and think a bit before cancelling.” Att. 53 at 2. Thereafter, Ghani
17 participated in, and closely managed, which changes Amazon was willing, and not willing, to
18 make in response to European Commission and FTC pressure. *See supra* pp. 41-42.

19 Since November 2021, the Prime team has reported to Grandinetti, indisputably giving
20 him authority to control Prime cancellation. Additionally, Grandinetti received the May 6 Memo
21 detailing customer confusion with Iliad, and Ghani thereafter updated him regarding progress (or
22 lack thereof) in simplifying Iliad. *See, e.g.*, Att. 125. Grandinetti nevertheless did nothing to
23 solve Iliad’s complexity.

VI. DEFENDANTS' EQUITABLE AND DUE PROCESS AFFIRMATIVE DEFENSES ALL FAIL.

A plaintiff moving for summary judgment is “not obligated to negate affirmative defenses.” *McCollough v. Johnson, Rodenberg & Lauinger*, 587 F. Supp. 2d 1170, 1176 (D. Mont. 2008). Rather, an affirmative defense defeats summary judgment only where a defendant supports “each element of the affirmative defense [with] summary judgment evidence.” *Id.* Therefore, to the extent Defendants intend to rely on an affirmative defense to defeat the FTC’s liability arguments, Defendants must put forward evidence to support that defense.

Nevertheless, in the event that the Court does not grant the FTC summary judgment as to liability, the FTC moves for summary judgment as to certain affirmative defenses, the resolution of which would streamline trial. In particular, summary judgment is appropriate as to Defendants’ Unclean Hands, Equitable Estoppel, and Laches defenses (collectively, the “Equitable Defenses”; *see* Dkt. #171 at 73-74) and Defendants’ Vagueness and Fair Notice defenses (collectively, the “Due Process Defenses”; *see id.* at 65-69). Because Defendants bear the burden of proving their affirmative defenses, the FTC meets its summary judgment burden by “showing that [Defendants lack] evidence of an essential element of [their] claim or defense.” *Metro Group*, 738 F. Supp. 3d at 1376. “[T]he burden then shifts to [Defendants] to identify specific facts from which a factfinder could reasonably find in the nonmoving party’s favor.” *Id.*

Here, Defendants cannot support several elements of the Equitable Defenses, and their Due Process Defenses fail as a matter of law.

A. Defendants Cannot Support Their Equitable Defenses.

Defendants can only prevail on the Equitable Defenses if they prove “affirmative misconduct” by the FTC. Dkt. #205 at 5-10 (citing cases). To support equitable estoppel or laches, that affirmative misconduct must cause a “serious injustice.” *Watkins v. U.S. Army*, 875 F.2d 699, 706 (9th Cir. 1989) (equitable estoppel); *United States v. Ruby Co.*, 588 F.2d 697, 705 n.10 (9th Cir. 1978) (“[E]ven if there were some allowance for laches against the government, there is no reason why that doctrine should not be subject to at least the same strictures as

estoppel.”). Similarly, for unclean hands, the affirmative misconduct must be “so outrageous as to cause constitutional injury.” *FTC v. Green Eq. Sols.*, 2023 WL 7107273, at *2 (C.D. Cal. Sept. 29, 2023); *see also SEC v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995) (defendant asserting unclean hands “must show such egregiousness that the resulting prejudice to defendant rises to a constitutional level”) (internal quotation marks omitted). Defendants come nowhere close to offering facts or evidence to establish “affirmative misconduct” or “substantial injustice,” and also fail to establish other elements of their estoppel defense.

1. The FTC Engaged in No Misconduct.

Defendants allege the FTC committed “affirmative misconduct” by (1) serving witnesses with civil investigative demands (“CIDs”)—effectively, subpoenas for documents and testimony—at their homes on or around the Fourth of July, (2) not sharing, with Amazon’s counsel, the FTC’s CIDs to current and former Amazon-employee witnesses, (3) insufficiently accommodating Amazon counsel’s scheduling requests (or so Amazon claims), (4) making an alleged “false statement” to one witness and “attempt[ing] to coerce” another witness not to contact Amazon, (5) purportedly asking witnesses to reveal privileged information, and (6) taking improper positions regarding the extent to which counsel for *Amazon* could also represent *witnesses* in confidential FTC investigational hearings. Att. 137 at 5-7.

If the Defendants put forth any specific evidence of these allegations in their Opposition to this Motion, the FTC will address it. Even if proven, however, Defendants’ allegations do not amount to the type of egregious misconduct that would justify entering judgment for Defendants. Specifically, service of document and testimony subpoenas is not misconduct (even near the Fourth of July), nor is keeping investigation-related information confidential from the target of the investigation or refusing to honor some of counsel’s “scheduling requests.” Similarly, even if it happened—and it did not—making a false statement to a single witness about the extent to which an investigation is confidential does not create a “substantial injustice.” Additionally, Defendants’ dispute with FTC staff regarding the extent to which Amazon’s counsel could also

represent witnesses in FTC investigational hearings was resolved *in Amazon's favor* by an FTC Order permitting Amazon's counsel to do exactly what they seek to punish the FTC for "attempting" to prevent them from doing.³² Finally, the FTC will respond to Defendants' allegations regarding "coercion" and seeking attorney-client privileged information from witnesses if Defendants identify any examples or provide any evidence. As described by Defendants (Att. 137 at 5-7), however, neither claim rises to the level of a "substantial injustice" justifying the Equitable Defenses.

2. Defendants Do Not Assert Constitutional Injury to Support Their Unclean Hands Defense.

A showing of unclean hands against the government requires proof of "constitutional injury." *Green Eq. Sols.*, 2023 WL 7107273, at *2. Defendants cannot identify any such injury, much less provide evidence to support it. Therefore, their unclean hands defense fails.

3. Defendants Do Not Identify Any Material "Affirmative Misrepresentation" to Support Equitable Estoppel.

Equitable estoppel is only available against the government when the government has made an "affirmative misrepresentation or 'affirmative[ly] conceal[ed] . . . a material fact,'" and the defendant relies on that misrepresentation or omission. *Ruby*, 588 F.2d at 703-704; *see also Baccei v. United States*, 632 F.3d 1140, 1147 (9th Cir. 2011). Defendants have not identified any misrepresentation or concealment of a material fact by the FTC to Defendants, or any reliance by the Defendants on such misrepresentation or concealment. Therefore, the equitable estoppel defense fails.

B. Defendants' Due Process Defenses Fail As a Matter of Law.

In its Motion to Dismiss, Amazon admitted that ROSCA is a "clear statute," Dkt. #84 at 31, but argued that the FTC's "theory" of liability was unconstitutionally vague and that the FTC had not provided "fair notice" of that theory to Defendants. The Court rightfully rejected those

³² See Order Granting in Part and Denying in Part Omnibus Petition to Limit or Quash Civil Investigative Demands (Sept. 21, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2123050AmazonPTQOpinion.pdf.

arguments. Dkt. #165 at 40-45. Now, Defendants claim to “plead a traditional as-applied challenge to ROSCA.” Dkt. #214 at 17. Whether framed as a “vagueness” or “fair notice” defense, Defendants’ argument fails because they committed straightforward violations of ROSCA’s clear terms.

The question for Defendants’ as-applied challenge is whether, “as applied to [this] specific factual scenario, a reasonable person of average intelligence in [Defendants’] position would be on notice that their conduct was legally prohibited.” *United States v. DeBorba*, 713 F. Supp. 3d 1042, 1066 (W.D. Wash. 2024); *see also United States v. Mitchell*, 652 F.3d 387, 405 (3d Cir. 2011) (as-applied challenge requires showing law’s “application to a particular person under particular circumstances deprived that person of a constitutional right”) (internal quotation marks omitted). The answer here is plainly yes because the concepts of “clear and conspicuous” disclosures, “express informed consent,” and “simple” cancellation mechanisms are all straightforward. “Consent” and “clear and conspicuous” are oft-invoked legal concepts,³³ and “simple” has a plain meaning. A person of ordinary intelligence, therefore, was on notice that failing to obtain consent (such as by accepting unintentional enrollees), not disclosing terms clearly and conspicuously (such as by putting them in fine print), and making cancellation difficult (such as through misleading button labels) was illegal.

Defendants appear to rely on two main arguments: (1) that the FTC is attempting to impose some new standard, above and beyond that imposed by Congress in ROSCA, and (2) that statements made by the FTC in the rulemaking context somehow make an act of Congress unconstitutional as applied to Defendants. Neither argument survives any scrutiny.

As to the first argument, Defendants claim the FTC is imposing a novel “dark patterns” theory of liability (Dkt. #171 at 66) or is outlawing certain “design elements” (Dkt. #171 at 66-

³³ A Westlaw search within the U.S. Code for “clear! /2 conspicuous!,” for example, yields 132 results. If Defendants’ due-process argument prevails, these provisions would all be on shaky ground. “Consent,” of course, is a ubiquitous concept. *See, e.g., supra* pp. 57-60 (discussing meaning of “consent” in contract law).

67) or is enforcing specific requirements found in the FTC’s new Negative Option Rule (Dkt. #171 at 67-68). This argument is indistinguishable from the motion-to-dismiss argument that the Defendants claim to have abandoned—specifically, that the FTC’s “theory” of liability is unconstitutional. Not only has this argument been rejected by the Court (Dkt. #165 at 40-45; Dkt. #180 at 9-10; Dkt. #241 at 13-15), but it is also simply a mischaracterization of the FTC’s case. The FTC does not allege that certain design elements are *per se* unlawful. Rather, the FTC argues that, taken as a whole, Prime enrollment does not clearly and conspicuously disclose Prime’s material terms or obtain express informed consent, and Prime cancellation is not simple. *Cf. Barrer*, 566 F.3d at 892 (Court “need not promulgate . . . a code of conspicuousness” to evaluate whether disclosures are clear and conspicuous; “[n]o particular kind of formatting is magical”).

Second, Defendants continue to rely on various statements by the FTC, made in the rulemaking context, indicating that ROSCA does not “specify” or “provide clarity” regarding how to comply with its terms. As the Court repeatedly has held (Dkt. #180 at 5-6; Dkt. #241 at 14-15), the FTC’s *characterizations* of a Congressional statute are irrelevant to whether the *text of the statute* itself provides fair notice or is unconstitutionally vague, which itself is an irrelevant question given that Amazon disclaims any argument that ROSCA is *facially* unconstitutional. Additionally, Defendants continue to mischaracterize the FTC’s rulemaking statements. As part of its justification for amending the Negative Option Rule—an FTC rule entirely separate from ROSCA³⁴—the FTC made the straightforward observation that ROSCA does not specify *how* to obtain express informed consent or *how* to make a cancellation mechanism simple. *See, e.g.*, Dkt. #87-1 at 4. Providing additional specificity does not somehow render retroactively ROSCA’s plain vague; Amazon therefore cannot use the Negative Option Rule as a tool to

³⁴ ROSCA does not authorize rulemaking, and the Negative Option Rule therefore does not implement ROSCA. Rather, the FTC promulgated the Negative Option Rule as an exercise of its general authority to “define with specificity acts or practices which are unfair or deceptive acts or practices.” 15 U.S.C. § 57a(a)(1)(B).

1 undermine an act of Congress. In any event, even if ROSCA could in theory be unconstitutional
2 as applied to certain conduct, Amazon's violations are straightforward.

3
4 **CONCLUSION**

5 For the foregoing reasons, the FTC respectfully requests the Court enter judgment as to
6 liability in favor of the FTC against all Defendants.

7 **LOCAL RULE 7(e) CERTIFICATION**

8 I certify that this memorandum contains 20,809 words, in compliance with the Court's
9 May 22, 2025 Order (Dkt. #300).

10 Dated: May 27, 2025

/s/ Evan Mendelson

11 JONATHAN COHEN (DC Bar # 483454)
12 EVAN MENDELSON (DC Bar #996765)
13 OLIVIA JERJIAN (DC Bar #1034299)
14 JONATHAN WARE (DC Bar #989414)
15 ANTHONY SAUNDERS (NJ Bar #008032001)
16 SANA CHAUDHRY (NY Bar #5284807)

17 Federal Trade Commission
18 600 Pennsylvania Avenue NW
19 Washington DC 20580

20 (202) 326-2551 (Cohen); -3320 (Mendelson); -2726
21 (Ware); 2749 (Jerjian); -2917 (Saunders); -2679
22 (Chaudhry)

23 JCohen2@ftc.gov; EMendelson@ftc.gov;
JWare1@ftc.gov; OJerjian@ftc.gov;
ASaunders@ftc.gov; SChaudhry@ftc.gov

COLIN D. A. MACDONALD (WSBA # 55243)
Federal Trade Commission
915 Second Ave., Suite 2896
Seattle, WA 98174
(206) 220-4474; CMacdonald@ftc.gov

1 RACHEL F. SIFUENTES
2 (IL Bar #6304016; CA Bar #324403)
3 Federal Trade Commission
4 230 S. Dearborn St., Room 3030
5 Chicago, IL 60604
6 (312) 960-5617; RSifuentes@ftc.gov
7

8 JEFFREY TANG (CA Bar #308007)
9 Federal Trade Commission
10 10990 Wilshire Boulevard, Suite 400
11 Los Angeles, CA 90024
12 (310) 824-4303; JTang@ftc.gov
13

14 Attorneys for Plaintiff
15 FEDERAL TRADE COMMISSION
16
17
18
19
20
21
22
23